SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1869.

No. [illegible]

THE UNITED STATES, APPELLANT,

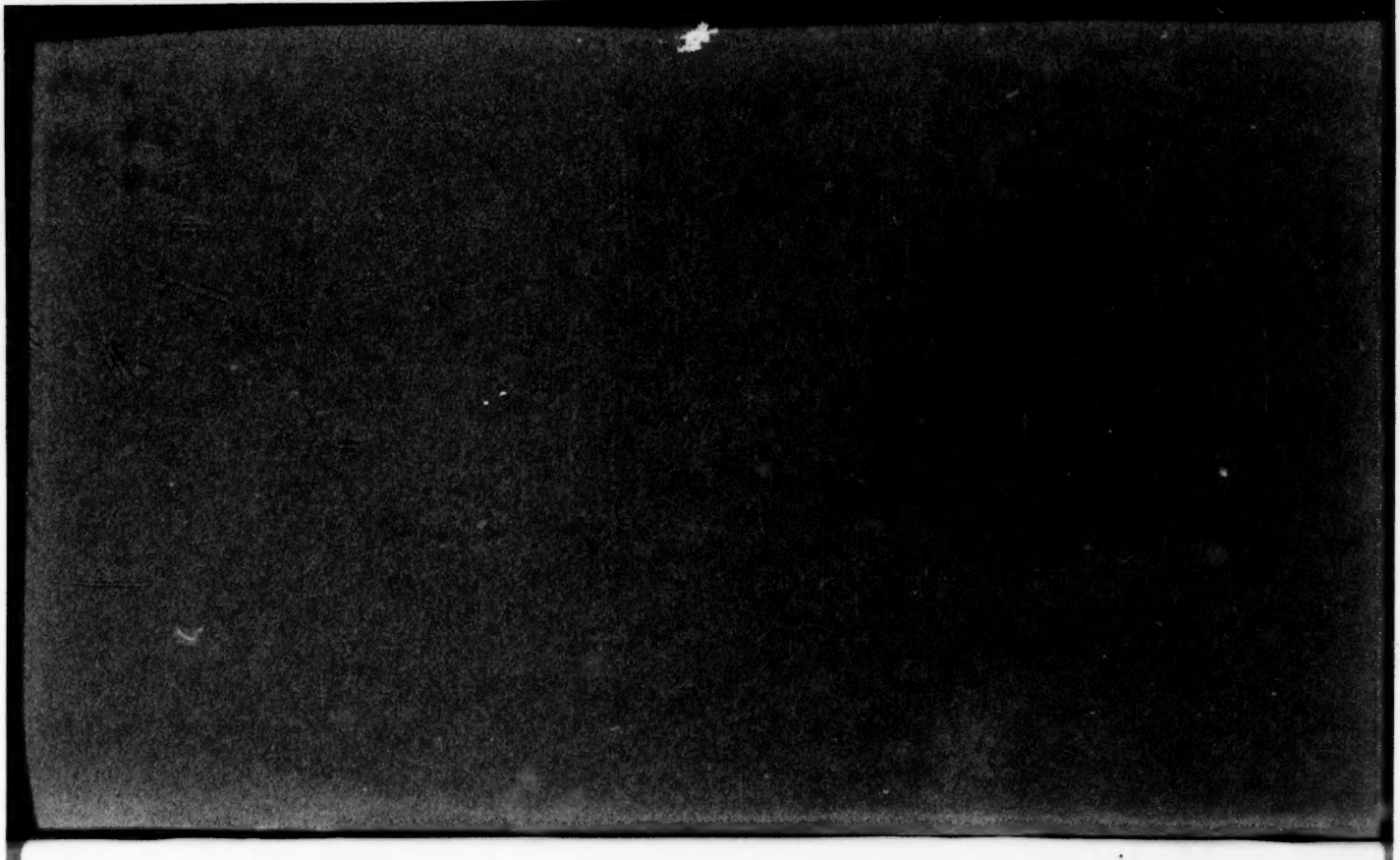
vs.

CLARENCE E. GLOVER, SOUTH SIMPSON, THOMAS R. CATRON, ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED NOVEMBER [illegible], 1869.

(SEPIA.)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 200.

THE UNITED STATES, APPELLANT.

vs.

CLARENCE P. ELDER, SMITH SIMPSON, THOMAS B. CATRON, ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

Be it remembered that heretofore, to wit, on the 18th day of February, A. D. 1893, there was filed in the office of the clerk of the Court of Private Land Claims, at the city of Santa Fe, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

2 THE UNITED STATES OF AMERICA.

In the Court of Private Land Claims, sitting in the City of Santa Fe, New Mexico.

CLARENCE P. ELDER AND THOMAS B. Catron, plaintiffs,
vs.
THE UNITED STATES, DEFENDANT.

To the Honorable Joseph R. Reed, chief justice, and the honorable associate justices of said court:

Clarence P. Elder and Thomas B. Catron, citizens of the United States, the first named a resident of the city of Denver, in the State of Colorado, and the second of the city of Santa Fe, in the Territory of New Mexico, and Smith Simpson, of the county of Taos, in said Territory, plaintiffs, bring this their petition against the United States of America, defendant; and thereupon represent and show unto this honorable court as follows:

First. That on December 31, 1845, Manuel Armijo, governor of New Mexico, then a department of the Mexican Republic, made, according to the laws, usages, and customs of said Republic, a grant of land to Juan Carlos Santistevan José Manuel Garcia, Julian Santistevan, Carlos Ortivis, and Tomás Ortivis, said land grant lying and being situate in what is now known as the county of Taos, bounded and described as follows, to wit: On the north by the limits of the Rio Colorado tract; on the south by the dividing line of the San Cristóbal; on the east by the mountains, and on the west by the rocky bluffs of the Rio del Norte.

Second. The original papers and documents relating to this grant of land are now on file in the office of the United States surveyor-general of the Territory of New Mexico, said grant being known and designated in that office as No. 61, grant to Carlos Santiestevan et al. for the Cebella tract of land in Taos County. Said original papers are not in the control of the petitioners so that they can file them herewith. A copy of the same, which are in the Spanish language, in duplicate, together with a translation, also in duplicate, is filed herewith, marked "Exhibit A."

Third. On March 25, 1872, the surveyor-general of New Mexico recommended this said grant for confirmation by the Congress of the United States, and his opinion and the proper papers, as required by law, were transmitted through the proper channels for the action of the Congress of the United States on April 1, 1872.

3 Fourth. A survey of this tract was made in November, 1877, by direction of the General Land Office, and it was approved by the United States surveyor-general of New Mexico on October 16, 1878.

A plat of said survey, showing an area of 17,159.57 acres is now in the records of the office of the said surveyor-general. Said survey was not made in accordance with the boundaries set forth in the original documents of said grant, but of a different portion of land, a part or all of which is included in the said grant.

A sketch map of the said grant, showing the area and boundaries of the same as near as may be, is filed herewith, marked "Exhibit B."

The lands embraced within the limits of the said grant contain no known mines or minerals of gold, silver, or quicksilver.

Fifth. The petitioners are the owners in fee of the said Cebella tract of land by purchase from the heirs and assigns of the original grantees, whose names are given above, and they claim a perfect title to the same. The title of the original grantees, their heirs and assigns, in and to the said grant of land was complete and perfect at the date when the United States acquired sovereignty over said Territory of New Mexico, and the land has been in the peaceable and undisputed possession of the original grantees, their heirs and assigns and legal representatives, from the making of the grant to the present time.

Sixth. There are no persons in possession of or claiming said grant of land, or any part thereof, otherwise than by the lease or permission of the petitioners.

The petitioners therefore pray that this their petition be considered by this honorable court, and the validity of said grant so made as aforesaid be inquired into and decided, and that the said tract and grant of land, with the boundaries as set forth in the original documents making said grant, be confirmed unto the petitioners, the legal representatives of the original grantees, forever, and for such other and general relief as to this honorable court may seem meet and proper and as the nature of the case may require.

CATRON & COONS,
Attorneys for Petitioners.

4 And be it further remembered, to wit, on the 23d day of March, A. D. 1893, a summons was issued by the clerk of said court, which said summons, with all endorsement' thereon, is as follows, to wit:

5 *Summons.*

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

CLARENCE P. ELDER ET AL., PLAINTIFF', } Petition filed in the clerk's
versus } office this day of
THE UNITED STATES, DEFENDANT. } , A. D. 189 .

The President of the United States of America to Matt. G. Reynolds, esq., attorney for the U. S. Court of Private Land Claims, greeting:

You, and each of you, are hereby notified that an action has been brought in said court by Clarence P. Elder et al., plaintiff", against you as defendant, under the provisions of the act of the Congress of the United States entitled "An act to establish a Court of Private Land Claims, and to provide for the settlement of private land claims in certain States and

Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff" is herewith attached and served upon you, and that you are required to appear and plead, demur or answer, to the petition filed in said action in said court within thirty days from the date of service of this summons upon you; and if you fail so to do the said plaintiff" will take default, according to the provisions of the aforesaid act.

Witness the honorable Joseph R. Reed, chief justice of the Court of Private Land Claims, and the seal of the said court, at the city of Santa Fe, in said district, this 23d day of March, A. D. 1893, and of the Independence of the United States the year.

[SEAL] JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy Clerk*.

6 *Proof of service.*

UNITED STATES OF AMERICA,
District of New Mexico, ss:

SANTA FE, *April 21, A. D. 1893.*

I hereby certify that I received the within writ on the 23 day of March, A. D. 1893, and that I have personally served the same upon the said defendant U. S.

Served on me this the 29 day of March, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

This writ, therefore, returned by me as the law directs, this 21st day of April, A. D. 1893.

TRINIDAD ROMERO,
Marshal,
By SERAPIO ROMERO,
Deputy Marshal.

Marshal's fees, 1 summons, $4.00.

(Indorsed:) Gen. No. 108. F. No. 2. U. S. Court of Private Land Claims, district of New Mexico. Clarence P. Elder, plaintiff, versus the United States, defendant. Summons. Filed this 21st day of April, A. D. 1893. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. Catron and Coons, of Santa Fe, N. M., attorney' for plaintiff".

7 And be it further remembered that thereafter, to wit, on the 16th day of April, A. D. 1895, an answer was filed in the office of the clerk, which said answer is in the words and figures following, to wit:

8 UNITED STATES OF AMERICA, ss.

In the Court of Private Land Claims, Santa Fe district, May term, 1895.

CLARENCE P. ELDER ET AL., PLAINTIFFS, *versus* UNITED STATES, DEFENDANT. } No. 108.

Answer.

Comes now the United States by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

That for aught it knows to the contrary, the matters and things in said

petition alleged may be true, but having no knowledge or information sufficient to enable it to form a belief as to whether they are true, and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that plaintiffs be put to their proof of all the allegations therein contained, as provided they shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy; and that they shall be put to their proof as to their pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper, and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

9 And be it further remembered that thereafter, to wit, on the 28th day of August, A. D. 1896, the same being a day of the regular August term, 1896, holden at the city of Santa Fe, Territory of New Mexico, the following, among other proceedings, were had, to wit:

CLARENCE P. ELDER
vs. } Juan C. Santistevan grant. No. 108.
THE UNITED STATES.

This cause now coming on to be heard there appeared T. B. Catron, esq., for the plaintiff, and W. H. Pope, esq., Assistant U. S. Attorney, appeared for the said defendant, The United States. The parties announcing themselves ready, the trial of the cause was proceeded with on the pleadings presented; oral and documentary proof was introduced. After hearing the arguments of the counsel the said cause was taken under advisement by the court.

10 On the trial of said cause the following testimony, oral and documentary, was offered and introduced:

11 In the Court of Private Land Claims, Santa Fe, New Mexico, August term, 1896.

CLARENCE P. ELDER ET AL.
versus } Juan C. Santistevan grant. No. 108.
UNITED STATES.

On August 28th, 1896, the above-entitled cause was called up for trial, and the following proceedings were had therein in open court:

Appearances: Messrs. Catron, Spiess & Gortner for the plaintiffs. Wm. H. Pope, esq., Assistant U. S. Attorney for the Government.

Mr. CATRON. I will read the petition.

We offer in evidence the original grant, copies, and translations. It comes from the surveyor-general's office. (Marked "Plaintiffs' Exhibit A.")

We offer in evidence the decision of the surveyor-general in this case, and the records of the surveyor-general's office. (Marked "Plaintiffs' Exhibit B.")

CHARLES M. CONKLIN, sworn on behalf of the plaintiffs, testified upon direct examination by Mr. Catron, as follows:

Q. Give your name, age, and residence.

A. My name is Charles M. Conklin; I am 55 years old; I live in Santa Fe, New Mexico.

Q. Did you know Augustin Duran?

A. Yes.

Q. Is he living or dead?

A. He is dead.

Q. How long has he been dead?

A. I do not recollect; 15 or 20 years.

Q. Did you know Juan Quintana?

A. Yes.

Q. Is he living or dead?

A. He is dead.

Q. About how long has he been dead?

A. I do not recollect; about two years ago.

Q. That is all.

We also offer in evidence the petition of claimants before the surveyor-general. (Marked "Plaintiffs' Exhibit S.")

12 Also the testimony of Agustin Duran and Juan Quintana, taken before the surveyor-general. (Marked "Plaintiffs' Exhibit C.")

We also offer in evidence certified copy of a deed from Juan Carlos Santistevan to Felipe Gonzales. (Marked "Plaintiffs' Exhibit G 14.")

Also deed from Maria Gregoria Medina to Felipe Gonzales. (Marked "Plaintiffs' Exhibit I number 16.")

Also deed from Maria Marta Romero to Felipe Gonzales. (Marked "Plaintiffs' Exhibit H 15.")

Also deed from Francisco Barela and wife to Felipe Gonzales. (Marked "Plaintiffs' Exhibit J 7.")

Also deed from Agapito Duran and wife, Guadalupe Gonzales, to Felipe Gonzales. (Marked "Plaintiffs' Exhibit K 18.")

Also deed from Francisco Gonzales to Donacio Gonzales. (Marked "Plaintiffs' Exhibit L 19.")

Also deed from Satrino Gonzales to Dionacio Gonzales. (Marked "Plaintiffs' Exhibit M 20.")

Also deed from Dionacio Gonzales and wife to John T. Graham. (Marked "Plaintiffs' Exhibit N 21.")

Also deed from Felipe Gonzales and wife to J. T. Graham. (Marked "Plaintiffs' Exhibit N 22.")

Also deed from John T. Graham to William Blackmore. (Marked "Plaintiffs' Exhibit O 23.")

We also offer in evidence decree of the district court of Taos County, New Mexico, in a case of Clarence P. Elder vs. Land Company of New Mexico (lim.), dated August 4th, 1891. (Marked "Plaintiffs' Exhibit No. 403.")

Mr. POPE. We object to its introduction; no foundation laid for it; and it is not the best evidence.

We also offer in evidence copy of agreement between Clarence P. Elder and New Mexico Land Company, filed in the clerk's office of Taos County, July 27, 1891. (Marked "Plaintiffs' Exhibit P.")

Mr. POPE. We object to it because it is not the best evidence.

We also introduce in evidence the bill of complaint of Clarence
13 P. Elder in the district court of Taos County, New Mexico, chancery, vs. The New Mexico Land Company, limited, filed April 4, 1891. (Marked "Plaintiffs' Exhibit E.")

Mr. POPE. We object to it for the same reasons.

We also offer in evidence the report of sale by special master, and deed of the sheriff of Taos County, New Mexico. (Marked "Plaintiffs' Exhibit F.")

Mr. POPE. We make the same objections on the grounds before noted.

We also introduce in evidence quit-claim deed from Wm. L. McClure and wife to S. H. Simpson. (Marked "Plaintiffs' Exhibit G.")

Mr. POPE. We make the same objections.

EZRA REDDING, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified on direct examination by Mr. Catron, as follows:

Q. State your name, age, and residence?

A. My name is Ezra Redding; I reside in Questa, Taos County, New Mexico.

Q. How long have you resided there?

A. About thirty years.

Q. Are you acquainted with the property which is under investigation known as the Santistevan grant?

A. Yes.

Q. How far do you reside from that property?

A. About a mile.

Q. Have you always resided in that section since you lived in Taos County?

A. Yes.

Q. Are you acquainted with that property?

A. Yes.

Q. Are you acquainted with the boundaries of it?

A. Yes.

Q. Do you speak Spanish?

A. Yes.

Q. Are you acquainted with the place designated los limitrofes de posecion de el Rio Colorado?

A. Yes.

Q. Where is that point or place?

A. It would be at the top of the bluffs or center of the settlements.

Q. At what point do the possessions of the Rio Colorado reach—actually possess?

A. They reach to the top of the bluffs, on the south side of the Red River.

Q. How far from Red River is that?

A. Few hundred yards.

14 Q. How wide is it at the eastern end from the Rio Colorado?

A. It would be about four hundred yards.

Q. At the western end how is it?

A. It comes down to nothing, to a point.

Q. What mountains are on the east, if you know?
A. The San Cristoval Range, I believe.
Q. Do you know the point called the la linia divisora de San Cristoval?
A. Yes; I think I do.
Q. Where is it with reference to any particular natural object that is there?
A. I think it is about to the channel where the people of San Cristoval irrigate with.
Q. Is that the point where you have always understood it to be?
A. Yes.
Q. How have you known that point?
A. By conversation with different persons; people I purchased from.
Q. What do you mean by purchasing from?
A. I negotiated the purchase there.
Q. For whom?
A. For John T. Graham.
Q. What is the San Cristoval?
A. It is a creek.
Q. Are there people residing there?
A. Yes.
Q. Were there when you first knew this property?
A. Yes.
Q. Thirty years ago, you say?
A. Yes.
Q. How far does that land which they occupy on the San Cristoval extend from that creek north?
A. All along up to the ditch.
Q. How far is that ditch from the river?
A. It is a three-cornered piece; it would be probably in some places 5 or 6 hundred yards, and then it runs to nothing.
Q. Does that ditch come from the San Cristoval Creek?
A. Yes.
Q. Is that the ditch that is used as the dividing line?
A. Yes.
Q. Do you know a point called el filo del penasco del el Rio del Norte?
A. Yes; it is a high bluff, just going down the Rio Grande River.
Q. How is that bluff at that point?
A. It is almost perpendicular.
Q. How close does it come down to the river at that point?
A. It comes right straight down from the top of the bluff right down to the river.
15 Q. What is the filo?
A. The top of the ridge, the top of the bluff just above where it comes down to the edge of the bluff.
Q. Do you know Juan C. Santistevan?
A. Yes.
Q. Do you know Jose Manual Garcia?
A. No.
Q. Do you know Julian Santistevan?
A. Yes.
Q. Do you know Carlos Ortivis?
A. Yes.

Q. Tomas Ortivis?
A. Yes.
Q. Do you know where he resides now?
A. Huerfano, Colorado.
Q. Who occupied this, if anybody, when you first knew it?
A. Felix Gonzales.
Q. Is he one of the parti's from whom you purchased the property?
A. Yes.
Q. What interest did he claim to have in it?
A. Two-thirds, I believe.
Q. By virtue of what right?
A. I think he purchased from his father; I am not certain.
Q. Who was his father?
A. I do not know.
Q. Where was he residing at the time you saw him?
A. On the ranch at Cebolla.
Q. That is within this property?
A. Yes.
Q. What was he doing?
A. He was farming.
Q. Did he have his residence there?
A. Yes.
Q. How much of a house did he have?
A. He had an adobe of two rooms; he had a two-roomed log house, if I am not mistaken; they were together.
Q. What cultivated lands did he have there, if any—Felix Gonzales?
A. Several hundred yards square.
Q. Did you see any enclosure?
A. Yes.
Q. What were they?
A. Fences.
Q. You say you have known this land for 30 years?
A. Yes.
Q. That is all.

Cross-examination by Mr. POPE:

Q. Where did you say you live?
A. At Questa, Red River, New Mexico.
Q. That is north of Red River?
A. Yes.
Q. How long have you been living there?
A. Thirty years.
Q. Where did you live before that?
A McGregor, Iowa.
Q. When you first knew this property Felix Gonzales was occupying it?
16 A. Yes.
Q. He was claiming a two-thirds interest in it?
A. I think he had that; I am not certain what he claimed.
Q. He claimed a large interest?
A. Yes.

Q. He was the only one living there at that time?
A. Yes.
Q. On this tract?
A. Yes.
Q. He was cultivating, you say, several hundreds square?
A. Yes; I think he was.
Q. How many acres, at the outside, do you suppose it was?
A. Well, it might have been 12 or 15 acres, maybe 20; I do not know particularly.
Q. You do not think it was more than 12 or 15 acres?
A. No; there was other land he had not in that year.
Q. How much did he have enclosed?
A. Several hundred yards; I did not particularly notice it.
Q. All the land that he had cultivated was in this enclosure?
A. Yes; I think so.
Q. That was the enclosure around his residence?
A. Yes.
Q. There was no other enclosure on the property that you know of?
A. No; not that I recollect.
Q. Do you know where the Rio del Lama creek is?
A. Yes.
Q. Where was this enclosure with reference to that creek; how far was it from the creek?
A. Four or five miles, I should think; maybe three or four.
Q. Four or five miles east of the creek?
A. No; the farm was west of the creek; that creek comes down like this [indicating].
Q. Where does this creek empty?
A. It empties into Red River.
Q. You say there are mountains there on the east?
A. The San Cristoval Mountains; yes.
Q. Where does this stream rise with reference to the mountains?
A. It rises in the mountains.
Q. Do you know an old trail that goes along there?
A. Yes.
Q. This stream *corsses* that trail?
A. Yes.
Q. Where do the cultivated lands start?
Mr. CATRON. We object, as irrelevant and immaterial.
17 A. They cultivate most on the place under the creek.
Q. There is no land cultivated east of this road, this old trail?
A. No; I believe not.
Q No land can be cultivated that is in the mountains east of that?
A. Lots of it can be cultivated.
Q. I mean east of this road it is all mountainous, is it?
A. Well, for some distance from the trail up to the mountains there are foot hills there.
Q. Is this Lama stream a constant stream?
A. Yes; the water would run in it all the time if they would not take it out for cultivation.
Q. At what point do they take it out for cultivation?

A. It is taken out above the trail.
Q. Is it cultivated above the trail?
A. Yes.
Q. How far above the trail is it taken out?
A. A few hundred yards.
Q. How far down is it cultivated?
A. Well, it would be about 6 miles.
Q. That is down stream in the neighborhood of where Felix Gonzales is?
A. Yes.
Q. I believe you are representing some parties in connection with this grant?
A. No, sir.
Q. You have represented the parties who claim to be owners?
A. Up to the time of their purchase.
Q. How long ago was that?
A. In '71.
Q. You have not had any connection with the grant owners since that?
A. No, sir.
Q. Do you know Severino Martin and Jose Martin, or ever heard of them?
A. No; I think not.
Q. Do you know Matias Cisneros, who lived at Rio Colorado?
A. Yes; I did.
Q. You remember when there were quite a number of settlers living on the Rio Colorado about that time, some years ago, and do you recollect of their filing a petition with the surveyor-general for the confirmation of the Rio Colorado grant?
Mr. CATRON. We object, because it is irrelevant, immaterial, and impertinent.
18 The COURT. It is a preliminary question.
A. Yes, sir; I do.
Q. They were petitioning for the grant that they claimed at that time, were they not?
Mr. CATRON. We object, as it is not the best evidence, and it is irrelevant, immaterial, and impertinent.
A. Yes.
Q. That was some time along about 1873, was it not; 20 years ago?
Mr. CATRON. Same objections.
A. I do not recollect exactly; I suppose it was about that time; I am not certain. I recollect about them telling me about it.
Q. Do you remember when they presented their claim to the surveyor-general some years ago?
A. No, sir.
Q. You remember that they did present it?
Mr. CATRON. We object, because it is irrelevant, immaterial, and impertinent, and not cross-examination.
A. No, sir.
Q. That country ascends this way until it reaches the ridge you have mentioned?

A. Yes.

Q. And then it descends again to the Lama Creek, I believe; does it? It goes to the divide and then ascends to the Lama?

A. Yes, sir.

Q. The Lama Creek is the next stream beyond this divide?

A. Yes.

Q. This divide reaches out west, I believe, does it?

A. Yes; northwest.

Q. Where does this divide end?

A. In the Red River. It runs down the Red River about four or five miles to the Rio Grande River.

Q. It crosses the Lama River; that divide there is practically a continuation of this one that goes to the Rio Grande River?

A. This ridge?

Q. Yes.

A. No, I do not think so; that is north of the river, but it does not extend there.

Q. North of what river?

A. North of the Red River.

Q. Is this the one that runs to the Red River?

A. It is a plain a little ways east of the Rio Grande River.

19 Q. From the Lama Creek the country ascends to a mesa, don't it?

A. It comes up to the bank and then descends down quite a plain.

Q. After it goes through that plain the topography of the country then rises, don't it?

A. It rises and falls; there are hills there.

Q. How far is the Garrapata Cañada from Lama Creek?

A. I suppose it is about a mile and a half up to the mountains, and below it is some distance; it runs in this way [indicating].

Q. The Cañada Garrapata runs east and west, does it?

A. Yes; towards the Rio Grande.

Q. Do you know where it comes out on the Rio Grande?

A. I never was where it empties.

Q. Are you acquainted with a wagon road that crosses the Cañada Garrapata?

A. Yes, sir.

Q. After the wagon road goes from Cañada it ascends quite a steep place and then goes down into the San Cristoval, I believe?

A. Yes; quite a distance.

Q. There is quite a steep ascent on the south side of the Cañada Garrapate?

A. Yes, sir.

Q. As I understand it, the lands that are irrigated by the Lama are between the Cañada Garrapata and the divide?

A. Yes; and west—down west near the Rio Grande.

Q. All the land that is irrigated is north of this Cañada Garrapata?

A. Yes; it was irrigated up to the Garrapata at one time.

Q. And all the lands that are irrigated is south of the ridge, which is south of the Rio Colorado?

A. Yes.

Q. The fact is, that the waters from the Lama can only be used to irrigate between these divides?

Mr. CATRON. We object, because it is irrelevant, immaterial, and impertinent.

A. Yes, sir.

Q. This divide south of the Rio Colorado is at some places two or three miles from the settlement of the Rio Colorado?

A. What divide do you mean?

Q. That divide that is south of the Rio Colorado, between the Lama Creek and the Rio Grande?

A. Yes.

Q. It is distant at some places?

A. Yes, up next to the mountains it is.

Q. And the Lama, as I understand it, runs west?

A. Yes, the Lama runs northwest.

Q. Is there a settlement known as Cebolla on this tract?

A. No, not on this tract; no, sir.

Q. Where is Cebolla with reference to it?

A. It is just north of the San Cristoval.

Q. How far from the present settlement of San Cristoval?

A. Right adjoining it.

Q. The south boundary of this Cebolla tract, how far is that from the present settlement of San Cristoval?

A. It is right at the settlement; the ditch is right there.

Q. That is right at the settlement of San Cristoval?

A. It is near a little north of the houses.

Q. The San Cristoval settlement has been there for quite a number of years?

A. I think so; it was there when I came there.

Q. The Cañada Garrapata is two or three miles north of this settlement of San Cristoval, is it?

A. Yes.

Q. You say that settlement is called Rio Colorado?

A. Yes, it is called Questa at present.

Q. Quite a number of Mexican people live there?

A. Yes.

Q. That is quite an old settlement, is it?

A. Yes.

Q. Was it there when you came there?

A. It was there in '62.

Q. The people have been planting there for a great many years?

A. Yes.

Q. You have mentioned the north boundary of this Cebolla tract as being the ridge on the south side of the Rio Colorado?

A. Yes; I have said the falls.

Q. It is not the ridge, then?

A. No.

Q. How far from this place you have mentioned as the north boundary is the planting lands?

A. It would be a few hundred yards.

Q. The top of the ridge south of the Rio Colorado, that would be two or three miles south of the settlement?

A. Yes.

21 Q. That is all.

Redirect examination by Mr. CATRON:

Q. I understood you in your examination in chief to say that the ridge south of the Rio Colorado, which was the boundary?

A. No; the falls, or the top of the bluffs, is what I said.

Q. How far up in the mountains does this Rio de la Lama rise?

A. From where?

Q. At its source, where does it rise?

A. It would be about three miles from the trail?

Q. How close up to the mountains does it commence?

A. Close up to the mountains; there are some springs there.

Q. How much of the land of this grant could be irrigated if channels were cut up close to the source of that stream?

A. I could not tell you that.

Q. Is all the land lying below the source of that stream?

A. Yes.

Q. State whether or not there is generally snow on the tops of these mountains.

A. Yes.

Q. There are streams running down from that snow at different points over the property?

Mr. POPE. We object, because it is leading.

The COURT. Proceed.

A. Yes.

Q. From these snows how much of the land of this grant could be irrigated by the water from these snows?

A. What portion of the grant?

Q. Yes.

A. I suppose probably a fourth of the grant.

Q. Taken out from the source of this Lama stream, could the waters be carried over into the San Cristoval Valley over that ridge, if you went up high enough?

A. Yes.

Q. And also over on the side of the mountain?

Mr. POPE. We object, because it is leading.

The COURT. He may answer it.

Yes.

Q. Then all the land that lies below the source of this stream could be irrigated?

Mr. POPE. We object, as it is leading.

22 A. Yes, sir.

Q. That would be nearly all of the grant?

Mr. POPE. We object to this line of examination; he has absolut'ly taken the witness and carried him along.

The COURT. We do not see what figure that cuts in the case.

Q. That is all.

Cross-examination by Mr. POPE:

Q. In order to do that you would have to take out a ditch at the to of the mountain?

A. You could take ditches out along at different places in the moun tains.

Q. You would have to take out a ditch right at the top of the moun tain to irrigate *of* this Lama Valley?

A. You could take out the water at different places.

Q. Take it right at the source of the river?

A. Yes, sir.

Q. The amount of water in the Lama is not sufficient to irrigate th whole of the Lama Valley, is it?

A. No; no, sir.

Q. It would not irrigate more than a small portion of it; that i entirely too small a creek?

A. The water sinks before it gets down.

Q. In fact, only a small portion could be irrigated?

A. A large portion of it, if it was saved.

Q. What fraction of the Lama Valley could be irrigated by wate from the Lama?

A. There could be half of it.

Q. That is all.

Mr. CATRON:

Q. That is, if you could take it from the source of the Lama?

A. Yes.

Q. And irrigate whatever part you could?

A. Yes.

Q. That is all.

JOSE YGNACIO GARCIA, a witness of lawful age, being produced sworn, and examined on the part of the plaintiffs, testified upon direc examination by Mr. Catron, as follows:

Q. State your name, age, and residence.

A. My name is Jose Ygnacio Garcia; I am 52 years old; I live a Costillo, Taos County, New Mexico.

Q. Do you know Jose Manuel Garcia?

A. I might have been seven years old when he died; he was m father.

23 Q. Where did he reside when he died?

A. In Arroyo Hondo.

Q. Do you know the property under investigation here, called th Cebolla grant?

A. Since I have reached the age of reason I knew it, and I know i now at present.

Q. Did you ever reside on it when you were young?

A. No.

Q. Do you know the boundaries of that grant?

A. I know some of them.

Q. Do you know the point designated as the los limitrofes de poseeio de el Rio Colorado?

A. I know some of that.

Q. How long have you known that point?

A. Since I can remember.

Q. Where do the actual possessions of the Rio Colorado reach on the south?

A. I can not state.

Q. Where do you understand it to be? You said you knew something about it.

A. At a place called Caidos de la Lama on the west.

Q. How far from the Rio Colorado were these Caidos de la Lama?

A. On the east side, from north to south it is about five miles, and from west to north it cannot be over two yards where the Rio de la Lama empties into the Rio Colorado.

Q. Where is that point on the east side with reference to the top of the mountain?

A. Where the Lama empties out.

Q. Empties out from what? You say it is four or five miles on the eastern side from the Rio Colorado. How far from the top, measured from the top of the mountain, is it? You say it is four or five miles. Is it measured from the top of the mountain?

A. I can not state how far from the top of the mountain. At the place where the Lama empties into the Rio Colorado is what I said was four or five miles.

Q. Four or five miles on which side of the Rio Colorado?

A. On the south of the Rio Colorado.

Q. The Lama River empties into what stream?

A. It does not empty into any stream; it simply comes out of the mountains.

Q. You spoke of the Lama. Do you mean where it comes out of the cañon in the mountains?

Mr. POPE. We object; it is leading.

The COURT. It is leading.

Q. What do you mean by saying it empties out?

24 A. That the water comes from the mountains.

Q. How far up in the mountains does the Lama rise where it comes out from the mountain?

A. I know two little streams; they rise there and then join into one.

Q. How far above where the Lama comes out of the mountains does that rise?

A. More or less about a mile from the spring from the water hills.

Q. How far from the top of the mountain does that water rise?

A. From the place where the water rises to the top of the mountain it can not be less than two miles and a half.

Q. Do you know the place called la linia divisora de San Cristoval?

A. I know it exactly.

Q. Where is it?

A. Between Juan Santistevan and Carlos Santistevan, who had lands in the place La Cebolla. One sustained that the ridge or border of the San Cristoval was to be the south line from west to east, and the other one sustained that it was the bottom of the side of the hills.

Q. One of them sustained that it was the ridge. On which side of the San Christoval. Designate that ridge.

A. To the north.

Q. How far from the river?

A. About a quarter of a mile.

Q. And the place where the other one claimed it to be; how far was that from the river?

A. It might be less than a quarter of a mile?

Q. You said they had possessions at La Cebolla. At that time were *were* their possessions at La Cebolla?

A. Those possessions—they held them under a strip of land that lies between the Rio del Norte and a place called Garrapata.

Q. Was that within or without the limits of this grant—those pieces of land where they actually lived?

A. Yes, sir.

Q. When was it that you heard that controversy?

A. I cannot state positively whether it was the latter part of August or the first part of September, 1863.

Q. This was two of the grantees, was it, that had the talk?

A. They were brothers, and one of them was my brother-in-law.

Q. Were you acquainted with Carlos Santistevan; is he living or dead?

25 A. He died last year in Rouse.

Q. Did you know Julian Santistevan, and is he living or dead?

A. Julian Santistevan died in the county of Huerfeno in the year '88.

Q. Did you know Jose Manuel Garcia?

A. He was my father.

Q. Who was his wife?

A. Maria Marta Romero.

Q. Did your father have any other name than Jose Manuel Garcia?

A. Jose Manuel de los Lagos Garcia.

Q. State whether or not he was ever called Manuel Lagos Garcia?

A. That is the way he was called even many years after his death by some people.

Q. Your father was sometimes known by that name as well as Jose Manuel Garcia?

A. I was 7 years old when my father died, and I could not know how the people called him, although they told me so.

Q. Was that since his death that they designated him as Manuel Lagos Garcia?

A. That is his true name, Jose Manuel de los Lagos Garcia?

Q. Do you know what mountain lies to the east side of the Cebollo grant?

A. I do.

Q. What is the name of that mountain?

A. The Cerro Grande.

Q. Has it any particular name?

A. Cerro Grande or La Lama.

Q. Is that the main range of mountains, or is there any other mountain?

A. Yes, sir.

Q. Do you know a point called el filo del peñasco de el Rio del Norte?

A. Yes.

Q. Where is that with reference to this tract of land?

A. On the west.

Q. How close to the Rio Grande, designate it; what is the filo?

A. It is the edge of the bluff.

Q. How close does the Rio Grande run to that bluff at that point where the Cebollo grant comes to the filo?

A. I can not state, because it does not come in a straight line; it comes in steeps—benches.

Q. State whether or not there is a bluff there for several miles up and down?

A. I do not know.

Q. Have you ever been down the Rio del Norte at that place?

A. Yes.

Q. Now designate if you know how what that filo del penasco is.

A. That filo del penasco is in a rock, where the edge of the river runs.

26 Q. How extensive is that rock in length up and down the river?

A. From the place where the Rio Colorado empties out it may be 11 or 12 miles.

Q. How deep is that down to the bottom of the river from this place called the filo del penasco?

A. It may be more than half a mile from the edge of the rock to the water.

Q. Is that on the valley of the Rio Grande or down in a box canon?

A. It is a box canon.

Q. Do you know whether or not, prior to 1863, Carlos Santistevan, Julian Santistevan, Tomas Ortivis, Carlos Ortivis, and your father, or either of them, occupied lands within this grant?

Mr. POPE. We object, as it is leading.

The COURT. He may ask it.

A. Carlos Santistevan and Julian Santistevan occupied it at La Garrapata; my father and Carlos Santistevan occupied the La Cebolla at a place called La Cebolla.

Q. How far is La Cebolla from the Garrapata, where they had their possessions?

A. More or less, two miles and a half.

Q. What direction is Cebolla from Garrapata?

A. To the north.

The COURT. We will take a recess until two o'clock to-day.

The hour of two o'clock of August 28th, 1896, having arrived, the court resumed the further hearing of the above-entitled cause, and the following proceedings were had therein in open court:

Cross-examination of Ygnacio Garcia by Mr. POPE:

Q. You say Jose Manuel Garcia was your father's name?

A. Yes.

Q. Did you know Tomas Ortivis?

A. I knew him.

Q. I believe you said that Julian and Carlos Santistevan were the only one' of the grantees living on the grant when you first knew it?

A. Also my father and Carlos and Tomas Ortivis.

Q. Where were they living?

A. In the Arroyo Hondo.

Q. That is not on this grant is it?

A. No.

Q. You say Carlos and Julian Santistevan were the only ones living on the grant.

A. They lived there one summer.

Q. You have spoken of a controversy between Carlos and Julian Santistevan as to the south boundary of this tract?

A. Yes, sir.

27 Q. You say one of them said it was an acequia and the other one said that it was a ridge?

A. Yes, sir.

Q. Now, how far is that ridge from the present settlement of San Cristoval?

A. About two miles.

Q. Who was living on the San Cristoval tract at that time?

A. There were many people.

Q. Did you know Antonio Jose Martin?

A. Yes, sir.

Q. Was he living on that tract at that time?

A. No, sir; he lived in the town of Fernandez, in Taos County.

Q. Did you know Cevilleta Martines?

A. I knew Cevilleta Martines, who was the nephew of Father Martines.

Q. Antonuo Jose Martines and Cevilleta Martines were brothers?

A. Yes.

Q. Were they claiming this tract, the San Cristoval?

Mr. CATRON. We object to that, as it has no bearing on the boundady.

The COURT. We do not see any boundary to this question. Objection sustained.

Q. You have mentioned the north boundary of this tract?

A. I want to know what tract.

Q. Of the Cevolla tract.

A. Yes.

Q. Where is that with reference to the Rio del Lama—what direction?

A. After it comes out from the Rio de la Lama it turns towards the west and then goes towards the north until it joins the Rio Colorado.

Q. You say there is a ridge on the north side of the Rio de la Lama?

A. Yes.

Q. Is it the first ridge north of the Rio del Lama?

Mr. CATRON. We object as to what ridge it is.

The COURT. You may ask it.

A. Yes, sir.

Q. Where is the boundary with reference to that ridge—at the top of the ridge?

A. Yes, sir.

Q. How much of a stream is the Rio de la Lama?

A. The water is very little.
Q. Is it as large as the San Cristoval stream?
Mr. CATRON. We object.
A. No, sir.
Q. Is it as large as the Rio Colorado?
Mr. CATRON. We object.
A. It is much less.
28 Q. During the planting season, how much water runs in that river?
A. Take it in June, water is abundant, but after June at the place where the road passes there is scarcely any water for drinking at times.
Q. How much is this river capable of irrigating during the planting season?
Mr. CATRON. We object, as it is immaterial and irrelevant.
The COURT. It don't throw any light on the matter in the least; we don't think this would afford us any light on the subject at all, Mr. Pope.
Q. Did you ever have any conversation with Carlos Santistevan and Julian Santistevan as to the east boundary of this tract?
Mr. CATRON. We object, as it is improper, irrelevant, and immaterial and not proper cross-examination.
The COURT. It may be asked.
A. Yes, sir.
Q. Where did they state the eastern boundary to be of this tract?
Mr. CATRON. We object unless he states the whole of the conversation; it is irrelevant and immaterial and not binding upon us.
The COURT. Objection sustained.
Q. Do you know of a grant called the Rio Colorado grant?
Mr. CATRON. We object to that, because we did not introduce anything about that grant; it is not cross-examination.
The COURT. It may be asked.
A. I have not held it in my hands, but I have seen it in several meetings in Rio Colorado. They were held there for the purpose of making a copy of it.
Q. Where did the possession of these parties under this grant extend, with reference to that ridge; just above Rio del Lama?
Mr. CATRON. The grant is the best evidence; he had better introduce it.
The COURT. We suggest that you are not trying a case before a jury; we understand this is limited to the possessions and has reference to the possessions mentioned in the grant in question. It may be asked.
A. I do not know, but it was stated to be the Caydos de la Lama. I do not know anything of my own knowledge.
Mr. CATRON. I ask to strike that out as heresay.
The COURT. It is immaterial whether it is in or out; he says he don't know.
29 Q. That is all.

Redirect examination by Mr. CATRON:

Q. You do not know of your own knowledge any limits that were mentioned in that grant, do you, of the Rio Colorado?
A. No, sir.
Q. You did not read the grant over?
A. No, sir.

Q. You did not hear it read over?
A. No, sir.
Q. That is all.

ANTONIO LAFOURET, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified, upon direct examination by Mr. Catron, as follows:

Q. State your name, age, and residence.
A. My name is Antonio Lafouret; I am 67 years old; I live in Rio Colorado, in the county of Taos, New Mexico.
Q. How long have you resided at Rio Colorado?
A. Since the year '42.
Q. Where were you born?
A. Here at Arroyo Hondo, Taos County, New Mexico.
Q. How far is Arroyo Hondo from the town of Rio Colorado?
A. It is not far; I can not state the distance.
Q. Do you know the tract of land in controversy here with reference to which this controversy is now being had called the Cebolla grant?
A. Yes, sir.
Q. How long have you known that tract?
A. For many years.
Q. Are you able to read and write?
A. Yes.
Q. Look at that signature and state if it is yours?
A. Yes, sir.
Q. How long have you known the Cebolla grant?
A. I do not remember the years, but I have known it for a long time.
Q. Did you know it as early as '46 or '45?
A. Since the year '46 they were using it, and they had taken possession of it.
Q. Who possessed it?
A. A man named Carlos Santistevan—there were two—and Manuel Santistevan.
Q. Do you know a man named Julian Santistevan?
A. Yes.
Q. Was he one of them?
A. Yes.
Q. Did you know a man named Jose Manuel Garcia?
A. Jose Lagos Garcia?
Q. Yes; was he one of them?
A. Yes,
Q. Did you Tomas Ortivis?
A. Yes.
30 Q. And Carlos Ortivis?
A. Also.
Q. Were they brothers?
A. So they said.
Q. Do you know the boundaries of that grant?
A. I know it from information—from conversations.
Q. You have lived in Rio Colorado since '42, you say?
A. Yes.

Q. Do you know the extent—how far the actual possessions of the people at Rio Colorado extend—the lands that they actually occupied extended towards the south from the Rio Colorado in the years '45 and '46—the summer of '45 and January, '46; how far south from the river there did they*r* possessions actually extend?

A. The claimants claimed from that place to the place called La Lama.

Q. Where did the lands which they actually occupied extend to?

A. They extended to the river—to the bottom of the river.

Q. From the grant of Rio Colorado, how far did they extend towards the south—the lands that they actually occupied?

A. Very little.

Q. How many yards or varas?

A. I can not state; at some portions it might have been 500 and others less than 200.

Q. Where were these lands that they actually occupied situate?

A. There below, at the bottom of the river.

Q. In the bottom of which river?

A. On the Rio Colorado.

Q. Was that on the south side of the river where these lands they actually occupied terminated? What was it that terminated the lands they actually occupied?

A. There was nothing there except the place they said the limit was.

Q. I will ask you whether there were any hills or caydos there?

A. Yes.

Q. Did these lands that they actually occupied extend up to the hills, or below the hills?

A. It was said that they extended to the hills; on the top of the hills to the ridge.

Q. In what manner did they actually occupy the lands occupied by them?

A. By pasturing.

Q. Cultivating any?

A. No.

Q. No cultivation?

A. No.

Q. You say they extended from five hundred and two hundred varas from the river?

A. Yes; on this side of the river.

31 Q. What are the caydos that go down into the river there?

A. The place from which the water flows from this side of the river.

Q. What are the caydos of the Rio Colorado?

A. These places; they were so called at that place.

Q. Did the people of the Rio Colorado cultivate any lands?

A. Not this way.

Q. On which side did they cultivate lands?

A. Not far on both sides of the river, but on the bottom lands of the river.

Q. These were the lands where they had their actual possessions, were they?

A. Yes.

Q. Do you know what mountain is on the east side of this property?
A. Yes.
Q. What mountain is it?
A. The Cerro Grande; the one that runs at the mouth of the Rio Colorado.
Q. What is that mountain called—what range of mountains?
A. Just the mountain; it is called Cerro de la Lama at some portions, and at others it is called Cerro Coyotes.
Q. Is it the same part of the same range?
A. Yes.
Q. Is there any other mountain further east than that?
A. The mountains are very large and very long; they continue.
Q. Have you ever been on the other side of that mountain?
A. Yes.
Q. What valley is that on the east side of the mountain?
A. The Valley of Monero, as it is called.
Q. That is the range of mountains that divides the Monero Valley from the Taos Valley?
A. Yes.
Q. Do you know a place on the south side of the Cebolleta grant that is called the la linia divisora de San Cristoval?
A. No; I have not known such a thing.
Q. In the year 1846, who were occupying, if any, the valley of the San Cristoval?
A. There were many persons there.
Q. How far did the limits of their possessions extend north of the San Cristoval Creek?
A. I never knew.
Q. You never knew where they extended to?
A. No.
Q. Have you ever seen on the west side of the Rio del Norte el filo del peñasco del el Rio del Norte?
A. Yes.
32 Q. What is el filo del peñasco?
A. The Rio Grande is very deep there, and the bank is composed of the rock on the edge of the filo.
Q. Did you ever know of any of these persons whom you have mentioned—Carlos Santistevan, Julian Santistevan, Tomas Ortivis, Carlos Ortivis, Jose Manuel Garcia—occupying any portion of this property? If so, where did they occupy it?
A. I saw the Santistevans planting in the Canon del Garrapata, and this same Lagos Garcia, I saw him at Largo.
Q. Jose Lagos Manuel Garcia?
A. Yes.
Q. Is he the father of Jose Ygnacio Garcia?
A. Yes.
Q. Did you ever see the Ortivises occupying any part of the property?
A. No, sir.
Q. How were the Santistevans occupying it? What were they doing?
A. They had a farm, and they had some jacales. They were living there, and they had families there.

Q. Which year was that?

A. I can not state positively. I do not want to concede a mistake.

Q. How was it with reference to the time the American troops came in the year '46? Was it before or after that time?

A. After the year '47.

Q. Do you know how long they had been living there at those places when you came?

A. No, sir.

Q. How was Jose Manuel Lagos Garcia occupying the property?

A. When I come he had a little planting strip.

Q. Have any house?

A. Yes.

Q. Family?

A. Yes; I went there, but I did not reach the house.

Q. What year was that, with reference to the time you saw the Santistevans?

A. About at that time, or a little before I had been there.

Q. How far is the Rio Colorado, where you live, from the place where the Santistevans were when you saw them?

A. The distance is large.

Q. How far from the place where you saw Garcia from where you live?

A. A little above.

Q. State whether or not you frequently or seldom went down to this property.

A. Very few times.

Q. How did it happen you saw these people at the time that you went there?

A. Because I was there hunting for some animals.

33 Q. That is all.

Cross-examination by Mr. POPE:

Q. These three people you have mentioned, Carlos Santistevan, Julian Santistevan, and Jose Manuel Garcia, they were the only people that you saw on that land at the time you were there; that you knew, were they?

A. Yes, sir.

Q. How much land did Julian Santistevan occupy?

A. I do not know.

Q. He was farming a small tract, was he?

A. Yes. There was a planting strip.

Q. Carlos Santistevan, he was cultivating a small strip too, was he?

A. The planting portion of the farm was together.

Q. How many acres did they plant there?

A. I can not state.

Q. As much as five acres?

A. It is impossible to say. I do not know how much an acre is.

Q. How many varas were they planting?

A. It may be one hundred varas.

Q. Not more than that?

A. Yes; the bottom was small.

Q. Manuel Garcia, how many varas was he cultivating?

A. He also had a strip; I do not know how much; very little, also.

Q. Were the people of Rio Colorado pasturing to the top of the ridge?
A. Yes.
Q. Is that the first ridge north of the Lama River?
A. Yes.
Q. Was that the point to which you say they claimed?
A. Yes.
Q. To the top of this ridge?
A. Yes; to the place of the Lama, and they went around and come over from this other side.
Q. Did they allow all to come over on the other side?
A. The people who had stock on the Rio Colorado.
Q. Did they allow the people of Cebollas to come over?
A. No; the people of Rio Colorado.
Q. Did the people of Rio Colorado claim that ridge as their boundary all the way?
Mr. CATRON. We object.
The COURT. That is the same question you had a while ago; sustained.
Q. These people claimed to the top of that ridge?
A. To the place De la Lama.
Q. That is the same ridge which you have mentioned?
A. Yes.
34 Q. That is all.
Mr. CATRON. That is our case, except I may want to supply that proof of Mr. Elder.

JOSE GUADALUPE CORDOVA, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name, age, and residence?
A. My name is Jose Guadalupe Cordova; I live in San Cristoval.
Q. How long have you lived there?
A. In the year 1857 I moved to San Cristoval.
Q. Have you been living there ever since?
A. Yes.
Q. Was that a settlement when you went there?
A. Yes; it was settled.
Q. Do you know an acequia just a little north of the present settlement of San Cristoval?
A. Yes.
Q. How far is it from the plaza itself?
A. I do not know how far it is from the town; it is immediately adjoining one hill on the north; but, more or less, it is about a mile; it may be more than a mile.
Q. Are the people of San Cristoval planting any where around that settlement?
A. They do not plant around the town. The town is on this side of the stream, and a portion of the people live on the other side of the river.
Q. Do you know an acequia between the town of San Cristoval and the Cañada Garrapata?

A. I only know of the ditches from which they irrigate the possessions of San Cristoval.

Q. How far north are the possessions of San Cristoval?

A. It is said that they extend as far as the ridge of the Garrapata

Mr. CATRON. I ask to strike that out. The grant of San Cristoval is the best evidence.

The COURT. The question is as to the possessions at the time this grant was made; he may ask about the possessions at that time. This witness went into that country in '57.

Q. When you went there in '57 what possessions did the people of San Cristoval claim?

Mr. CATRON. We object as to what they claimed.

35 The COURT. Sustained.

Q. What possessions did the people of San Cristoval have?

A. They possessed that that they hold now.

Q. How far north did they extend?

A. We recognized it up to that place that we recognize it now.

Q. What place is that?

A. The ridge that starts from the river at a little mountain called Cerrito Blanco, along the ridge until it joins with the Rio del Norte where a little cerrito lies there.

Mr. CATRON. We move to strike that answer out.

The COURT. Proceed; take it subject to the objection.

Q. Where is that with reference to the Cañada Garrapata, the point you have mentioned?

A. What point do you mean?

Q. The ridge you have mentioned—how far is that from the Garrapata?

A. It is to the south, on this side of the ridge.

Q. Is it the first ridge to the south, or some other ridge?

A. No.

Q. How far is the Cañada Garrapata from this ridge you have mentioned?

A. It is the same ridge that starts from the river, and the bottom of the Garrapata lies in this direction and the ridge in this other direction.

Q. Is it the first ridge south of the Cañada Garrapata?

Mr. CATRON. We object, as it is leading.

The COURT. Ask it.

A. The Cañada Garrapata has another ridge on the north side.

Q. Is this the first ridge on the south side?

Mr. CATRON. We object, as it is leading.

The COURT. He may ask it.

A. Yes.

Q. How far west does the Cañada Garrapata run?

A. At the place where it empties into the Rio del Norte.

Q. How does this ridge run with reference to this Canon Garrapata as it goes to the Rio del Norte?

A. It falls towards the Canon Garrapata.

Q. How far is this ridge from the settlement of San Cristoval?

A. At the lower part at one side it is about one mile or two miles.

Q. North or south.

A. To the south.

36 Q. To the south of San Cristoval?
A. To the north.
Q. Do you know Antonio Jose Martines?
A. Yes.
Q. Where did he live when you knew him?
A. In Taos.
Q. Did he claim any interest there in the San Cristoval grant?
Mr. CATRON. We object, as it is leading, and in the second place it has no connection whatever.
The COURT. Note the objection.
A. Yes, sir.
Q. That is all.

Cross-examination by Mr. CATRON:

Q. You say you have lived in San Cristoval since '57?
A. Yes.
Q. There were some settlements there at San Cristoval when you went there?
A. Yes; it was all settled.
Q. Where were these settlements with regard to the San Cristoval stream?
A. It was all settled on both sides of the river as far as the hills.
Q. How far from the river did the settlements extend?
A. On this side towards the town about two or three hundred yards.
Q. North on the other side?
A. To the other acequia.
Q. How many yards was that from the river?
A. I do not know how many yards it is from the river, but more or less, 4 or 5 hundred yards in certain portions; at other portions it was less.
Q. Do you mean that there was an acequia on each side of the river?
A. Yes.
Q. Was there more than one acequia on each side of the river?
A. There was only one.
Q. All the lands which those people occupied and cultivated lay between the acequia and the river, did they?
A. Some were on this side of the river and some on the other side of the river.
Q. But lying between the two acequia on the river?
A. Yes.
Q. They did not cultivate or occupy any lands outside of the acequias, did they?
A. No; only the other portions was recognized as belonging to the place of San Cristoval.
Mr. CATRON. I ask to strike that out.
The COURT. It may be stricken out.
Q. How many people were living at San Cristoval when you first went there?
A. I do not know how many; there were many.
37 Q. Were there two hundred when you first went there?
A. No.
Q. Was there one hundred?

A. No.
Q. Fifty?
A. Perhaps about fifty.
Q. How many people live there now?
A. Now there are more than forty.
Q. Do you mean heads of families, or men, women, and children?
A. Heads of families.
Q. Were there as many heads of families in '57 as there are now?
A. No; there were more.
Q. More in '57 than there are now?
A. Yes.
Q. Did they occupy any more lands in '57 than they do now?
A. Yes.
Q. What lands did they occupy in '57 that they do not occupy now?
A. These same lands that are under the channels on the other side of the river; many of them are not planted now.
Q. The people, then, have abandoned some of their lands that they occupied in '57, have they?
A. Those that have them now have not abandoned them.
Q. They did not cultivate lands north of the acequia on the north side of the river, did they?
A. Yes; they cultivated some strips.
Q. On the north side of the acequia?
A. Yes.
Q. How did they irrigate them?
A. With water from the same ditch.
Q. How close are these lands to the acequia?
A. It is not far from the ditch, from the border of the acequia to the north.
Q. Did they lie right near the ditch?
A. Yes; some of them were lying right near the ditch.
Q. How far is the farthest part of any one of these lands on the north side of the ditch, or on the ditch; as much as 50 yards?
A. No; 25 yards. They are right by the ditch, some of them, and the farthest one below may be about a hundred varas from the ditch.
Q. Then there are none of these lands lying more than one hundred yards from the ditch?
A. No; they are right adjoining with the ditch. The last one below the planting lands there on the south is about a hundred varas and perhaps more.
Q. How large a tract is that one? How many varas are the'e in that tract of land?
A. I do not know.
38 Q. Is it 25 varas?
A. No; it is more.
Q. Fifty?
A. It is more.
Q. 75?
A. About 4 or 5 hundred yards, more or less.
Q. Which way do they lie; lengthwise with the ditch?
A. No; they lie opposite the ditch.

Q. Is that land lower than the ditch?
A. Yes.
Q. How far is that below the town?
A. The town is on this side.
Q. How far are these lands from the place San Cristoval?
A. I do not know.
Q. Is it a mile?
A. More or less; it may be a mile and it may be less.
Q. Is there any house on these lands?
A. No; there are no houses.
Q. Who occupied those lands?
A. My father did.
Q. When did he occupy them first?
A. They have been occupying them until now.
Q. When did you' father first occupy them?
A. Since the year '57, when he bought that place at San Cristov from the Martineses.
Q. You are interested in this investigation, are you now?
A. No.
Q. You are interested to have your lands fall outside of that gra are you not?
A. I do not know if they are out or not.
Q. You want them to be outside, don't you?
A. I do not know.
Q. Who has talked to you about your testimony in this matter?
A. Nobody.
Q. How did they know that you knew anything about it?
A. I do not know.
Q. Is this the first time that you have told anything about anythi that you knew?
A. Yes.
Q. You have not even spoken to a soul on earth about it?
A. I have not talked to anybody.
Q. No one has asked to give you your testimony here?
A. No.
Q. You came here voluntarily?
A. I did not come here voluntarily.
Q. On which side of the river do you live?
A. On the other side of the river of San Cristoval.
Q. Do you live on these lands which you claim?
A. Yes.
Q. When were these lands first occupied?
A. Which lands?
Q. These that you have bought from the Martineses. When were th first occupied?
A. I do not know when they were first occupied; my father boug them already when they were planted.
39 Q. And he bought them in the year '57?
A. Yes.
Q. How old were you then?
A. I do not know; I do not remember.

Q. Was there any house on them when your father bought them?
A. Nobody.
Q. How much land was actually broken up and cultivated when your father bought them at that place?
A. All the land that my father bought was cultivated.
Q. Have you not put in any new land since?
A. That land at Ojito, in San Cristoval.
Q. Have you not added any lands at the place where your father bought from Martines?
A. Yes; I bought other strips.
Q. How much have you added to it?
A. About two hundred yards.
Q. How much land did your father buy? Give a description of the land he bought.
A. My father bought five hundred yards.
Q. Five hundred yards in what direction—north or south, east or west?
A. From north to south and part east to west.
Q. How many yards was it from north to south?
A. I do not know.
Q. How many yards was it from east to west?
A. Five hundred.
Q. The river runs east and west there, don't it?
A. Yes.
Q. How many yards is it from north to south—that is, from the south side of that land to the north side of that land of the cultivated lands?
A. I do not know.
Q. Five hundred?
A. No.
Q. There is nobody besides yourself that has any land on the north side of that acequia, is there?
A. Yes; and there are others who have lands also on the north side of the acequia.
Q. Who are they?
A. David Alries.
Q. Who else?
A. Benedicto Martines also has lands.
Q. Who else?
A. Teofilo Martines. These are the ones that I can remember.
Q. How do they irrigate their lands?
A. In that way; we water from the same ditch.
Q. The same ditch don't run at the foot of the hill. It runs down in the valley, don't it?
A. Yes; it runs at the foot of the hill, but they take the little ditches from the ditch.
D. Do they run the water up hill?
40 A. No, they do not; but they take their ditches out this way until they can bring their water down.
Q. Those pieces of land are very small pieces, are they?
A. Yes; they are small.
Q. And right near the ditch?
A. Yes; they are from the ditch in that direction.

Q. They lie right at the mouth of the little arroyo or mountains that come down where you can take the water out of the ditch and run them down, do they not?

A. Yes.

Q. Do they live north of the ditch?

A. Yes, most of them; no, they live on this side of the acequia; David Alires lives on the other side.

Q. How long has David Alires lived there?

A. I think the same time I have lived there.

Q. Do you know where he got his land?

A. Yes; he bought it there from another man.

Q. Who did he buy from?

A. He bought from Francisco Quintana.

Q. These lands that you speak about lie in the bottom of the San Cristoval Valley, do they not?

A. Yes.

Q. Do any of them lie on the hillsides?

A. No; there is no ditch on the hill; a man is on the level.

Q. Nobody lives up there, do they?

A. No; nobody lives on the hillside.

Q. How far are the farthest lands on the north side of the river from the river of San Cristoval itself?

A. I do not know how far they extend north.

Q. That is all.

Redirect examination by Mr. POPE:

Q. You say you have talked to no one; do you know this man, Mr. Coleman?

A. He is the one I have talked to; that surveyor there; he called me.

Q. Did you ever talk to him about this case?

A. I have not talked at other places about this matter until now.

Q. Do the people of San Cristoval have any flocks?

Mr. CATRON: We object, because it makes do difference what they have in the way of flocks.

The COURT: Proceed.

A. They have not; they have goats.

41 Q. Where do they pasture with reference to the acequia?

Mr. CATRON. We object, as it is immaterial and irrelevant.

The COURT. He may ask it.

A. From the acequia to the woods.

Q. What direction?

A. To the north.

Q. Did anyone in the past ever show you an object which was said to be the north boundary of this San Cristoval tract?

Mr. CATRON. We object, as it is impertinent, irrelevant, and immaterial.

The COURT. He may ask it.

A. What object do you mean?

Q. I want you to tell what object.

A. Yes; some documents that my father had with regard to the interest he held.

Q. Has any one ever shown you a cross which had any reference to this property—with regard to the San Cristoval tract?

Mr. CATRON. We object to that.

The COURT. Proceed.

A. I have shown it to nobody; nobody shows it to me.

Q. In the year '65 what occurred as to Pasqual Martines and Santiago Martines?

A. They informed me of the boundary line that lies to the south of San Cristoval; that direction towards the Cerrito Blanco; up to the mountains; on the shady side of the Cerrito del Blanco; they told me that the tract instead of a monument mark had a curly cedar; a very long one; instead of a monument they marked that cedar with a cross.

Q. Was north or south of San Cristoval?

Mr. CATRON. We object, as he has said it was south.

The COURT. He may ask it.

A. On the north.

Q. Who was Pasqual Martines?

A. He was the brother of Antonio Jose Martines.

Q. Was that Antonio Jose Martines the son of Severino Martines?

A. Yes.

Q. Where was this cross with reference to that ridge you have mentioned?

A. At the curly cedar; they told me they marked a cedar.

Q. Did you see this cross?

A. Yes.

Q. Where was it with reference to this ridge?

42 Mr. CATRON. We object, as it is impertinent, irrelevant, and immaterial.

A. On the cedar; the cedar was marked with a cross.

Q. Where was the cedar?

A. At the Cerrito Blanco.

Q. Where was the Cerrito Blanco with reference to the Cañada Garrapata; how far was it from it?

A. The Garrapata starts right there from the little ridge where the cedar was.

Q. What direction does the Garraputa run?

A. To the west.

Q. Does the Cañada Garrapata go to the Rio Grande River, or not?

A. At the mountains.

Q. Do you know where the Cerrito Negra is?

A. Yes.

Q. How far is that from the Rio Grande?

Mr. CATRON. We object, as it is not cross-examination; entirely new matter.

The COURT. He may ask it.

A. It is right by the box of the river.

Q. How far is the Cañada Garrapata from it?

A. It is on the divide of the Cañada Garrapata; on this side.

Mr. CATRON. I ask to strike that out; he said that Pasqual Martines told him.

The COURT. The motion will be entered of record; we will dispose of it hereafter.

Q. That is all.

Cross-examination by Mr. CATRON:

Q. When was it you had this conversation with Pasqual Martines and Jose Martines?

A. I said that I had a conversation with Pasqual Martines.

Q. Why did you mention Antonio Jose Martines?

A. To announce him as the brother of Pasqual Martines.

Q. He is the same Martines that got up the Taos revolution, is he, at the time General Price went up there to put them down?

A. I do not know; I do not remember.

Q. He was the only priest by the name of Martines up there about Taos, was he?

A. He was the only one.

Q. You knew he had Governor Bent killed, didn't you?

A. I do not know; I do not know if he had him killed or not.

Q. When was this conversation had with Pasqual Martines and Santiago Martines?

A. In '65.

43 Q. Whereabouts?

A. In Taos.

Q. In the town of Fernandez?

A. Yes.

Q. They told you about this cross, did they?

A. Yes.

Q. You never heard of it before that time, did you?

A. I did not.

Q. Did they tell you they put the cross there?

A. That they and their brother.

Q. At what time did they say they put the cross there?

A. They did not say the time.

Q. How long before they spoke to you did they say they had put the cross there?

A. No; I do not know if they had placed the cross there.

Q. Did they go with you to the cross?

A. No.

Q. The town of Fernandez is how far from this land?

A. I do not know how many miles.

Q. It is about 25 miles, is it?

A. I do not know; I do not understand about miles.

Q. It is about ten leagues, is it?

A. I do not know; I do not know anything about miles or leagues.

Q. It is nearly a day's travel, is it?

A. No.

Q. It takes about five or six hours, don't it?

A. Less.

Q. Does it take five hours?

A. About 4 or 5.

Q. On horseback?

A. On horseback.

Q. How many miles do you travel on horseback an hour?

A. I do not know.

Q. That is all.

Mr. POPE. We tender in evidence the papers in reported number 76, the town of Rio Colorado, being original grant papers, official translation thereof, petition of claimants, sketch map, and surveyor-general's opinion. They are part of the files of this case, from the surveyor-general's office. (Marked "Defendant's Exhibits A1, A2, A3, A4, and A5.")

Mr. CATRON. We object to them because they are irrelevant and immaterial.

Mr. POPE. We also offer in evidence the papers in reported number 110 also from the surveyor-general's office, being original grant papers, official translation thereof, three sketch maps, opinion of surveyor-general, and petition of claimants. (Marked "Defendant's Exhibit B1, B2, B3, B4, B5, B6, B7.")

Mr. CATRON. We object to them as being irrelevant, improper, and immaterial, no foundation having been laid for them, and I move to strike them out.

Mr. POPE. These papers were filed in the surveyor-general's office in 1872, on March 11th. Do you admit their genuineness?

Mr. CATRON. I will admit they come from the surveyor-
44 general's office if you say so. I admit the signatures of Andres Archuleta and Miguel Montoya are genuine; but I won't admit that the signature of Juan Antonio Martines is genuine.

The COURT. We have not disposed of the question; they will go in subject to the objection.

I hereby certify that the above and foregoing thirty-two and a part pages contain a full, true, and correct transcript of all the eviden'e taken in the above-entitled cause. Santa Fe, New Mexico, September 22, 1896.

W. J. McPHERSON,
Official Stenographer C. P. L. C.

45 PLAINTIFF'S EXHIBIT A.

Sello cuarto: [SELLO.] Dos reales.

Años de mil ochocientos cuarenta y dos y mil ochocientos cuarenta y tres. Habilitado para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

Admr., AGUSTIN DURAN. Gober., M. ARMIJO.

Exmo. señor gobernador deste departamento de Nuevo Mexico, D. Manuel Armijo:

Cárlos Santistevan, por si, y á nombre de otros cinco compañeros, todos vecinos de la poblacion de los Dolores, del partido de Taos, ante V. E., en debida forma como mejor haya lugar en derecho, represento y digo: que hallándonos sin tierra de propiedad que laborcar para el sostenimiento de nuestras personas y pobres familias, y teniendo visto un terreno valdillo muy propio para su cultivo, bañable con cierta agua que le dicen de la Lama, muy suficiente para su riego en el punto que asi se denomina, y

hasta otro punto que le nombran La Sebolla, y los que están entre la poblacion del Rio Colorado y de San Cristoval, pertenecientes á dicha demarcacion de Los Dolores de Taos, pido y suplico á la bien conocida y acreditada liberalidad de V. E., el que á nombre de los altos poderes de nuestra republica mexicana se sirva hacernos donacion del enunciado terreno, pues es de muy proporcionadas amplitudes y agua para poderse cultivar y suficiente sustentacion de los postulantes y sus familias, y sin perjuicio de tercero, ni en rason de propiedad ó de pasteo, ni de cualquier otro modo, antes si será resultante á mucho beneficio y aumento de la poblacion y de la agricultura, y que á mas de suvenir á la necesidad de los postulantes será tambien fortificar aquel puesto ó frontera que guarda la poblacion referida del Rio Colorado, del que solo distará el mencionado punto cosa de una legua y de la poblacion de San Cristoval un algo mas. Por tanto á V. E. suplico encarecidamente tenga á bien acceder á esta nuestra solicitud. Juro y protesto, &c. Ciudad de Santa Fe, diciembre 31, de 1845. A la obediencia de V. E.

CARLOS SANTISTEVAN.

SANTA FE, *diciembre 31, de 1845.*

Al prefo. del disto., para qe. vea si el terreno que se solicita no tiene dueño; haga qe. el juez á qe. corresponde, dé las posesciones qe. el petente espone.

ARMIJO.

RIO ARRIBA, *Enero 3 de 1846.*

El juez de paz, á que corresponde, investigará si el terreno que los impetrantes solicitan es valdio, y no resultare de su donacion perjuicio de tercero, pues no habiendo esto procederá á merecenarlos con el
46 terreno amplio que cada cual pueda laborear, con la condicion de que deben cercar con una cerca formal, para evitar los daños, y que no estorben los caminos, pastos y abrevaderos, y con prevencion de que han de mantener armas suficientes para su resguardo.

D. LUCERO.

En esta tercera demarcacion de Dolores, del partido de Taos, á los veinte dias del mes de marzo de mil ochocientos cuarenta y seis, yo, el juez de paz por ministerio de ley C. Juan Lorenzo Martinez, en la misma demarcacion en cumplimto. de un decreto de enero 3 de mil ochocientos cuarenta y seis, decretado por el señor prefo. del segundo distrito del norte D. Diego Lucero, como á juez que me corresponde investigar si el terreno que se solicita de los cinco impetrantes es valdio y no teniendo ningun embaraso, pasé al terreno, el cual allándolo incultivo y llermo los tomé de la mano, y pasiandolos muy despacio y en todo dro. de tener autoridad competente los posecioné en nombre de Dios y de los altos poderes de nuestras sabias leyes mexicanas, que tienen poder para garantisar terrenos valdios, para que se destiere el osio y se aumente la agricultura, segun ellos solicitan para laboriar, por allarse sin tierra de propiedad; y á cuya virtud, al mismo instante que recivieron su agraciada donacion, dieron voces de alegria, diciendo que viva la inclita soberania de la nacion mexicana, que protejidos en tal manera; de cuyo jubilo

arancaron sacates, tiraron piedras, y siendo legitimos dueños del terreno que decian bañar con el agua de el rito de la Lama que á esperanzas de tal fuentecita pidieron la donacion; y por lo mismo se les señaló por limites por el norte con los limitrofes de posecion de el Rio Colorado; y por el sur hasta donde tope la linia divisora de San Christoval; y por el oriente la sierra y por el poniente el filo del peñasco de el Rio del Norte, dejando, desde onde no se puede bañar para el oriente, libres los pastos, caminos y los abrevaderos sin por meritos de posiadores queran ebitar pasteos, como tambien quedan obligados a sercar con una serca formal para no tener que reclamar daños, teniendo que mantener armas suficientes para su resguardo; y para que en todo tiempo conste esta donacion, la autorizé con las facultades que me son conferidas; con los testigos de mi assistencia à falta de escribano publico que no lo hay en este departamento, y va en el presente comun por no haver del sello que corresponde, obligándose los nuevos colonisados á la reposicion de el sellado cuando oportunamente lo hallen; que de todo doy fe.

J. Lorenzo Martinez.

Assa. Juan José Cordova.
Assa. José Concepcion Medina.

47 Nota.—Son los posecionados en sus propios nbres. y apellidos los que siguen en esta lista nominal que ellos, por la vuena tranquilidad y vecindad, se partan á proporcion de la tierra la que entregué sin medir por el dia tan pesimo y el mucho monte que obstaba el cordel; y son en esta Juan Cárlos Santistevan, José Manuel García, Julian Santistevan, Cárlos Ortivis, Tomás Ortivis.

Vale. [rúbrica.]
Ass'a. Juan José Cordova.
Ass'a. José Concepcion Medina.

Siendo de los posecionados en esta posecion que al calse se pone esta nota Tomás Ortivis, la transfiere á su hermano, Cárlos Ortivis, sus drs. de la posecion, y lo firmó por ante mi Loro. Martin, alcalde, y la firmó conmigo el dicho Tomás, hoy 7 de abril de 1850.

Ass'a. Rafael Sisneros. Loro. Martin, *Alcalde.*
Mateo Romero. X. Tomás Ortivis. X.

Siendo los posecionados en esta posecion que al calse se pone esta nota Cárlos Ortivis, la transfiere al C. José Gonzales sus dro's de la posecion, y lo firmó por ante dos testigos presentes la que transfiere sus dros., por la cantidad de tres vacas orras, una baca parida y una yunta de bueyes; la que firmó con testigos, hoy 29 de septiembre de 1850.

Tgo. José Miguel Pacheco. Cárlos Ortivis. X.
José Bitor Valdez. X.

(Endorsement:) File 141. Deposited Nov. 9, 1870, in surveyor-general's office by Jose Felipe Gonzales as one of the heirs and present claimants. David J. Miller, C. C. Formally filed Feb. 5, 1872, by Graham Blackmore, present claimants. Miller, C. C.

48 *Translation of foregoing Exhibit A.*

Seal fourth. [SEAL.] Two reales.

Years one thousand eight hundred and forty-two and one thousand eight hundred and forty-three.

Habilitated for the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

Administrator AGUSTIN DURAN. Governor MANUEL ARMIJO.

To his excellency Manuel Armijo, Governor of this Department of New Mexico:

I, Carlos Santistevan, for myself and in the name of five other associates, all residents of the town of Dolores, in the district of Taos, before your excellency in due legal form, represent and state that finding without any land with title in fee to cultivate for the support of ourselves and our needy families, and having found a vacant tract very suitable for cultivation, irrigable from certain water, said to be from the Lama, quite sufficient for its irrigation, at the place called by that name up to another place, the Cebolla, which places are between the settlements of the Rio Colorado and San Cristoval, pertaining to the said district of Dolores de Taos, I ask and pray, from the well known and distinguished liberality of your excellency, that, in the name of the high powers of our Mexican Republic, you be pleased to make us a grant of the said tract; for the same is of very convenient size, and has ample water to be cultivated, and to afford sufficient support for the petitioners and their families, and would not injure any third party with respect to property or pasturage, or in any other way, but would rather result in the great welfare and increase of population and of agriculture; and, besides relieving the necessity of the petitioners, it will also strengthen that locality or frontier which guards the said population of the Rio Colorado, from which the said tract is distant but about one league, and from the settlement of San Cristoval somewhat more.

Therefore I earnestly pray that your excellency be pleased to accede to this our petition. I declare and protest, etc.

City of Sante Fe, December 31, 1845. At the disposition of your excellency.

CARLOS SANTISTEVAN.

SANTE FE, *December 31, 1845.*

To the prefect of the district, that he ascertain whether the land applied for has an owner, and cause the corresponding justice to deliver the land referred to by the petitioner.

ARMIJO.

JUAN BAUTISTA VIGIL Y ALARID,
Secretary.

49 RIO ARRIBA, *January 3, 1846.*

The justice of the peace to whom it corresponds to do so will investigate whether the tract the petitioners apply for is vacant, and

whether any injury to a third party would result from the granting thereof; and, none resulting, he will proceed to grant them of the land an abundance of what each can cultivate, under the condition that they inclose the same with a regular fence, in order to prevent damages, and that they do not obstruct the roads, pastures, and watering places, and with notice that they shall keep arms sufficient for their defence.

D. LUCERO.

In this, the third precinct, Dolores, of the district of Taos, on the twentieth day of the month of March, one thousand eight hundred and forty-six, I, Juan Lorenzo Martines, justice of the peace, by authority of law, for the said precinct, in pursuance of a decree of January 3, eighteen hundred and forty-six, by his honor Diego Lucero, prefect of the second district of the north, issued to me as the proper justice, that I investigate whether the land applied for by the five petitioners is vacant, and I, meeting no impediment, proceeded to the tract and, finding the same uncultivated and unoccupied, took the petitioners by the hand, and leading them very slowly and in full legal form, in virtue of holding competent authority, I placed them in possession of the land they pray for for cultivation, they being without land in fee, doing so in the name of God and of the high authority of our wise Mexican laws, which are sufficient to grant the public domain, to the end that idleness be banished and agriculture be encouraged. Wherefore they, at the instant they received their liberal donation and were favored in this manner, shouted with joy, saying huzza for the renowned sovereignty of the Mexican nation. And in this joy they plucked up grass and cast stones, as being lawful proprietors of the land which they wished to irrigate with the water of the valley of the Lama, as relying upon that small water source they had applied for the donation; and I therefore designate to them for limits: On the north, the boundaries of the Rio Colorado grant; on the south, to where the dividing line of San Cristoval is reached; on the east, the mountain, and on the west, the edge of the bluff of the Rio del Norte, leaving the pastures, roads, and watering places free, eastwardly, from where they can not irrigate; they not to prevent pasturing in virtue of being the possessors; and they are also obligated to inclose with a regular fence, so that they may not have to claim damages, and shall keep arms sufficient for their protection.

And to the end that this grant may in all time subsist, I authenticate the same under the authority conferred upon me, with my attending witnesses, for the lack of a notary public, there being none in this department; and it is done on this common paper, there being none of the proper stamp, the new settlers binding themselves to supply the same of the proper stamp whenever they can opportunely procure it; to all of which I certify.

J. LORENZO MARTINES.

Attending: JUAN JOSÉ CORDOVA.
Attending: JOSÉ CONCEPCION MEDINA.

NOTE.—The persons placed in possession, with their full names, are those following in this list of names, made that they, for the sake of peace and good neighborhood, may in proportion to the tract divide among themselves the land I delivered them without measuring, owing

to the very inclement day and the much thicket which impeded the cord; and they are in this list: Juan Carlos Santistevan, José Manuel Garcia, Julian Santistevan, Carlos Ortivis, Tomas Ortivis.

[RUBRIC.]

Valid.
Attending: JUAN JOSÉ CORDOVA.
Attending: JOSÉ CONCEPCION MEDINA.

Tomas Ortivis being of those placed in possession in this grant, at the foot of which this note is appended, he transfers to his brother, Carlos Ortivis, all his rights in this grant; and he signed this before me, Lorenzo Martin, alcalde, and the said Tomas signed this with me this 7th April, 1850.

LOR'O MARTIN, *Alcalde.*
TOMAS ORTIVIS. X

Attending: RAFAEL SISNEROS.
Attending: MATEO ROMERO. X

Carlos Ortivis being of those placed in possession under this grant, at the foot of which this note is appended, he transfers to the citizen José Gonzales his rights in the grant; and he signed this before two witnesses present; and he transferred his rights for the price of two dry cows, one cow with a calf, and one yoke of oxen; which he signed with the witnesses this 29th of September, 1850.

CARLOS ORTIVIS. X

Witness: JOSÉ MIGUEL PACHECO.
Witness: JOSÉ BITOR VALDES. X

SANTA FE, NEW MEXICO, *February 5, 1872.*

The foregoing is a correct translation from the original in Spanish, to the best of my knowledge and belief.

SAM'L ELLISON, *Translator.*

Sworn to and subscribed before me this February 5, 1872.

T. RUSH SPENCER,
Surveyor-General.

51 SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, February 5, 1872.

The foregoing translation having been by me compared with the original in the Spanish language and found correct, the same is hereby adopted as the official translation.

DAV. J. MILLER, *Translator.*

52 PLAINTIFF'S EX. S.

Being petition of claimants of the Cebolla grant to the surveyor-general of N. M.

To Honorable T. RUSH SPENCER,
Surveyor-General of the Territory of New Mexico:

John T. Graham, a resident of the county of Colfax and Territory of New Mexico, and William Blackmore, a resident of the county of Costilla and Territory of Colorado, represent that they are the owners in fee

of a certain tract of land lying and being situate in the county of Taos and Territory of New Mexico known as "La Lama" or the "Cebolla" grant, bounded or described as follows: On the north by the limits of the Rio Colorado grant; on the south by the dividing lin/ of the San Cristobal; on the eas' by the mountains, and on the west by the rocky bluffs of the Rio Del Norte, all of which boundaries are well known landmarks. Said John T. Graham and William Blackmore claim a perfect title to said land by virtue of a grant made on the 31st day of December, A. D. 1845, by Manuel Armijo, the then governor of New Mexico, and perfecte' according to law by possession given by Lorenzo Martinez, justice of the peace, on the 20th day of the month of May in the year A. D. 1846. Said grant was made according to the laws, usages, and customs of the Republic of Mexico to Juan Carlos Santistevan, Jose Manuel Garcia, Julian Santistevan, Carlos Ortibis, and Tomas Ortibis, as will appear by reference to said laws and usages at that time in force, as also by reference to the petition, grant, and act of possession herewith filed and marked A and made a part of this petition.

The said John T. Graham and William Blackmore further state that they can not show the quantity of land claimed by them only so far as set forth by the foregoing description and bounds; nor can they furnish a plat of the survey of the same, as no survey has ever been made. Your petitioners further state that the said above-mentioned grantees, after having been put in lawful possession of said grant, and those holding under them, conformed to all the laws and regulations in regard to the same as required at that time, and have so continued to hold possession of the same up to the present time.

Your petitioners further show that on the 7th day of April, A. D. 1850, said Tomas Ortibis sold and conveyed his interest in said grant to said Carlos Ortibis. Said Carlos Ortibis, on the 29th day of September, A. D. 1850, and a'so by deed dated April 26th, 1853, sold and transferred and conveyed all of his interest in said grant to one Jose Gonzales, since deceased. Said Julian Santistevan, by deed dated February 3rd, 1852, sold, transferred, and conveyed all of his interest in said grant to said Jose Gonzales, since deceased. Said Juan Carlos Santistevan, by deed dated March 29th, 1854, sold, transferred, and conveyed all his interest in said grant to said Jose Gonzales. Said Jose Manuel Garcia, under and by the name of Manuel Lagos Garcia, by which said name he was sometimes called, by deed dated February 23rd, A. D. 1853, sold, transferred, and conveyed all his interest in said grant to said Jose Gonzales, which said transfers vested in said Jose Gonzales, since deceased, the entire property in fee simple in said grant of land.

Your petitioners further state that after the p'rchase of said
53 grant of land as aforesaid, and whi'e he was the owner and possessor thereof, the said Jose Gonzales departed this life, leaving his widow, Maria Gregoria Medina, Jose Felipe Gonzales, Savino Gonzales, Francisco Gonzales, Francisca Gonzales, now married to Francisco Berele, Guadalupe Gonzales, now married to Agapita Duran, and Dolores Gonzales, now married to Felipe Baca, leaving them as his sole surviving heirs and owners by inheritance from him of the said grant of land.

Your petitioners further state that the said grantee, Juan Carlos Santistevan by quitclaim deed dated October 8th, 1871, sold, transferred, and conveyed to said Felipe Gonzales all of the right, title, and interest which

he had or might have had at the time in said grant of land, and Maria Marta Romero, widow of said Jose Manuel Garcia, by like quitclaim deed dated October 4th, A. D. 1871, sold, transferred, and conveyed all her right, title, and interest in said grant of land to said Felipe Gonzales. Maria Gregoria Medina, widow of said Jose Gonzales, by deeds dated November 28th, 1868, and October 7th, 1871, sold, transferred, and conveyed to said Felipe Gonzales all of her said interest and the interest of her daughter Dolores, which she had previously acquired by purchase in and to said grant of land. Said Francisca Gonzales, together with her husband, by deeds dated August 2nd, 1871, and October 7th, 1871, sold, transferred, and conveyed all her said interest in said grant of land to sa'd Felipe Gonzales. Said Guadalupe Gonzales, together with her husband, by deeds dated June 13th, 1863, and December 1st, 1871, sold, transferred, and conveyed al' her said interest in said grant of land to said Felipe Gonzales. Said Francisco Gonzales, by deeds dated October 7th, 1871, and December 22nd, 1866, sold, transferred, and conveyed all his interest, &c., in and to said grant of land to one Dionicia Gonzales. Said Savino Gonzales, by deeds Jan'y 17th, 1867, and October 7th, 1871, sold, transferred, and conveyed all of his interest, &c., in and to 'aid grant of land to said Dionicia Gonzales. Said Felipe Gonzales and said Dionicia Gonzales, by deeds dated Jabuary, 24th, 1872, sold, transferred, and conveyed all of their right, title, claim, and interest, whether by purchase, inheritance, or otherwise, in and to said grant of land to your petitioner John T. Graham, and your petitioner John T. Graham, by like deed dated January 25th, 1872, sold, transferred, and conveyed the one undivided one-half of said grant of land to your other petitioner William Blackmore, by which said deeds of conveyance the entire grant of land aforesaid vested in your petitioners in fee simple, all of which will more fully appear by reference to certified copies of said deeds of conveyance herewith filed and marked B, C 1 and 2, D, E, F, G, H, I, J No. 1 and 2, K No. 1 and 2, L No. 1 and 2, M No. 1 and 2, N No. 1 and 2, O, respectively.

Your petitioners further state that possession of the said grant of land was delivered to your petitioners under said deeds of conveyance, and that they are now in full and complete possession thereof. They therefore ask that the said grant of land be speedily acknowledged in and confirmed to them.

T. B. CATRON,
Attorney for Claimants.

(Endorsed:) File 141. 1. Petition of claimants to surveyor-general. This document is duly recorded on pages 342, 343, 344, and 345, in vol. 3 of land claim records in the office of the surveyor-general. Pl. E. "C" reporter.

54 PLAINTIFFS' EXHIBIT C.

Extract from transcript of private land claim, reported as No. 61, in New Mexico, being grant to Juan Carlos Santistevan et al., December 31, 1845, for the Cebolla tract of land, in Taos County, New Mexico, decided by the surveyor-general March 23, 1872.

* * * * * * *

Juan Carlos Santistevan et al. Lama or Cebolla tract.

AGUSTIN DURAN, being by the surveyor-general sworn to depose in this case, on his oath declares:

Question. (By the surveyor-general.) What is your name, age, and residence?

Answer. My name is Agustin Duran; my age is eighty years, the 14th of August next; and my residence here, at Santa Fe.

Q. In the years 1844 and 1845, what office, if any, did you hold in the department of New Mexico?

A. In the years 1844 and 1845 I was administrator of customs in the department of New Mexico, and had control or management of stamped paper branch of the Government here, and had authority to habilitate stamped payer by extending it for subsequent years.

Q. Please examine document marked A in this case, bearing a signature purporting to be yours, and state whether it is genuine, and whether that document was habilitated for the years 1844 and 1845?

A. The signature is mine and is genuine, and that on the left of it is Governor Manuel Armijo's genuine signature. The paper was thus habilitated because there was none for the term 1844 and 1845 on hand and to render it legal for that term under the law.

Q. Who were the governor and secretary of the department of New Mexico in the year 1845, and are the signatures borne by the granting decree in this case, in your opinion, genuine?

A. Manuel Armijo was governor and Juan Bautista Vigil y Alarid secretary during the whole of that year, and their signatures to said document are genuine.

AGUSTIN DURAN.

Sworn to and subscribed before me this February 7, 1872.

T. RUSH SPENCER,
Surveyor-General.

55 JUAN QUINTANA, being by the surveyor-general duly sworn, on his oath declares:

Question. What is your name, age, and present residence, and also where did you reside in the year 1846?

Answer. My name is Juan Quintana; my age is 45 years; my present residence is here in Santa Fe, and in the year 1846 I resided at the Arroyo Hondo, in the county of Taos.

Q. Did you know Juan Lorenzo Martinez in 1846; and if so, what office did he then hold?

A. I knew him; and he in that year was alcalde for the precinct of Arroyo Secoin, the county of Taos, otherwise called the Arroyo Hondo, there being but one alcalde for that locality.

Q. Did you know at that time Juan Carlos Santistevan, José Manuel Garcia, Julian Santistevan, Carlos Ortivis, and Tomas Ortivis? And, if so, if any of them were commonly known by other names, state what they were.

A. I knew them all. Juan Carlos Santistevan was generally called Carlos Santistevan, and José Manuel Garcia was commonly called Manuel Lagos.

Q. Did or did not Juan Lorenzo Martinez, to your knowledge, in the year 1846, as alcalde, place the parties mentioned in the preceding ques-

tion in possession of a grant of land in Taos County? And if so, describe the land if you can do so.

A. In 1846 Señor Martinez so gave possession, which I witnessed, being present on the ground; and the boundaries of the land are: On the north, adjoining the grant of the Rio Colorado; on the east, the mountain; on the south the San Cristoval River, and on the west the Rio Grande Bluffs.

Q. State, if you know, who have had possession of the land since the year 1846.

A. The grantees possessed it until they sold it to José Gonzales, and when he died it passed to his heirs, who have held and occupied it until very recently.

JUAN (his x mark) QUINTANA.

Sworn to and subscribed before me this February 7, 1872.

T. RUSH SPENCER,
Surveyor-General.

56 JOSÉ ANTONIO LAFORET, being by the surveyor-general duly sworn, on his oath declares:

Question. What is your name, age, and residence?

Answer. My name is José Antonio Laforet; my age is forty-five years, and I reside at Rio Colorado, in the county of Taos, where I have resided since the year 1842.

Q. Do you know the signature of Juan Lorenzo Martinez? If so, please examine the signature on document A, purporting to be his, and say whether, in your opinion, the signature is genuine.

A. I know the signature of said Martinez, and that shown me on document A is genuine.

JOSÉ ANTONIO LAFORET.

Sworn to and subscribed before me this February 7, 1872.

T. RUSH SPENCER,
Surveyor-General.

57 PLAINTIFF'S EX. B.

Being decision of surveyor-general of N. M. in reference to the Cebolla grant.

Juan Carlos Santistevan et al.—The Cebolla tract.

This claim for a tract of land situated in the present county of Taos, in this Territory, and known as the Cebolla tract, depos'ted November 9, 1870, was formally filed in this office February 5, 1872, by Thomas B. Catron, as attorney for John T. Graham and William Blackmore, the present claimants, and at the request of the parties that the case be acted upon as soon as practicable, the same was set for trial for the 7th of the same month.

The title papers, emanating from the Mexican Government in New Mexico, filed and acted upon in the case, are the originals, and from them it appears that—

1. Juan Carlos Santistevan, for himself and five other unnamed individuals, on December 31, 1845, petitioned Governor Manuel Armijo for a tract of land at the Lama, between the settlements of Rio Colorado and San Cristobal.

2. Governor Armijo, on the same day, referred the petition to the prefect of the district, with instructions to ascertain whether the land was vacant, and, if so, to place the petitioners in possession thereof.

3. The prefect, on the 3rd day of January, 1846, directed the proper alcalde to investigate whether the land was vacant and ascertain wh'ther any injury would result from making the grant, and, if not, to place the parties in possession of fully as much land as they could cultivate, notifying them, as conditions subsequent, that they should fence in the same, should not obstruct the highways, watering places, or pasture grounds, and should keep themselves provided with arms for defence.

4. The alcalde, on the 20th of March following, in virtue and pursuance of the prefect's authority and direction, after the investigation required and upon ascertaining that no impediment to his doing so prevented, proceeded to the land and, finding the same uncultivated and unoccupied, formally placed the parties, to wit, Juan Carlos Santistevan, Jose Manuel Garcia, Julian Santisvean, Carlos Ortibis, and Tomas Ortivis, in possession of the land by them applied for for cultivation, stating and prescribing as boundaries, as follows: On the north, the boundaries of the Rio Colorado grant; on the south, the line of San Cristobal; on the east, the mountain, and on the west, the edge of the bluff of the Del Norte River.

In the investigation of the genuineness and validity of this claim under the laws, usages, and customs of Mexico, three witnesses were sworn and examined by the surveyor-general. Of these, the first, Augustin Duran, testified to the validity of the stamped paper, the muniments filed bearing the original petition, the decrees, and the possessory act constituting the claim for ; that he had himself, as revenue officer of the Mexican Government, legally habilitated the same for such use. The witness Juan Quintana testified that Juan Lorenzo Martinez, the officer who placed the grantees in juridical possession of the land,
58 was, in the year 1846, the officiating alcalde at Arroyo Seco, in the locality of this grant, and in that year did place said parties in possession of the land, and also that they remained in possession thereof until they sold to Jose Gonzales, who and whose heirs continued to hold and occupy the same until recently. And the witness Jose Antonio Loforet testified to the genuineness of the signature of said Alcalde Martinez to said act of possession.

The present claimants of this land have filed with and as part of this claim sundry deeds of conveyance claimed to constitute a perfect chain of title from the original grantees to themselves, and have requested an approval of the grant to them as the legal representatives of the grantees. The deraignment as to some of the mesne conveyances is not shown to the satisfaction of the surveyor-general, however, to be perfect in all respects, and he has therefore deemed prudent to act upon the claim only with respect to its legal sufficiency as a grant of the land in question to the five individuals mentioned in the original title papers.

The decree of concession of Governor Armijo, notwithstanding its apparent vagueness in language as a grant, is nevertheless considered intelligible in that character and sufficient to the end and purpose manifestly intended, and all the constituent papers seem correct in form and complete. The sole question then for determination is as to the legal

competency of the governor of the Mexican Territory of New Mexico to make the grant.

The Mexican Congress, on the 18th of August, 1824, enacted a law known as the colinization law, providing that "the Government, conformably to the principles established in this law, shal' proceed to the colonization of the Territories of the Republic," and the Government has required to take the steps necessary for carrying into effect said enactment, and accordingly November 21, 1828, prescribed and established regulations for the required purposes. In these it is declared that "the governors of the Territories are authorized, in compliance with the law of the general Congress of August 18, 1824, and under the conditions hereafter specified, to grant the vacant lands in their respective Territories to such empresarios, families, or single persons, whether Mexicans or foreigners, who may ask for them for the purpose of cultivating or inhabiting them. The law and regulations here quoted from would seem to determine the question of the legal competency of Governor Armijo in the premises of this concession, and besides the Supreme Court of the United States have held in analogous cases that the governors of the Mexican Territories were competent to make grants of the national domain within their jurisdictions. See cases of the United States against Ritchc, and Fremont against the United States, in 21 Curtis's Supreme Court Reports.

The land is shown by the testimony to have been in the continuous possession and occupation of the grantees and their heirs and legal representatives from the date of the grant until the present day, and there has been made known to this office no adverse claim thereto, nor any objection to the approval and confirmation of this claim.

In view and consideration of the premises, the claim in this case is deemed and held to be a good and valid one as a grant to the individuals and for the land hereinbefore named and described, made in accordance with the laws, usages, and customs of the Mexican Republic, and
58½ under the treaty of Guadalupe Hidalgo with Mexico and the laws of the United States must be recognized and confirmed, and the same is hereby approved and recommended for confirmation to said five original grantees and their heirs and legal representatives, and a transcript of all the papers in the case is herewith transmitted for the final action of the Congress of the United States.

T. Rush Spencer,
Surveyor-General.

Surveyor-General's Office,
Santa Fe, New Mexico, March 23, 1872.

(Endorsed:) File 141. No. 61. Juan Carlos Santistevan and others. Surveyor-General's decision. This document is duly recorded on pages 394, 395, 396, & 397, in vol. 3, of land claim records in the office of the surveyor-general. Pl. Ex. "B." Reporter.

59 Defendant's Exhibit A1.

To the honorable U. S. Surveyor-General for New Mexico.

Sir: The undersigned, settlers and residents of the town of San Antonio

del Rio Colorado, in accordance with your order, have the honor of giving the following facts in connection with this grant:

In the year 1842, in fulfillment of a petition of the settlers, the prefecture of the Taos district donated to the people the grant referred to in the original document having the following boundaries, viz:

To the north the "Ojito de la Pinabeta," a source to a little creek, surrounded by pine trees, and the Serro Guadalupe, a distance of seven (7) miles; to the south the "Cuesta del Rio Colorado," the highest point of an acclivity known by that name, a distance of six (6) miles; to the east the "Sierra," a streak of mountains called by that name, a distance of one (1) mile; to the west the point of the in the cañon where the Rio Colorado joins the Serro Guadalupe, a distance of seven miles.

From that time up to the present time the undersigned have been by their predecessors and are now personally in possession of the land, which has never been surveyed by Government.

The accompanying original document are the proofs which the petitioners have in order to have their grant registered, for which registration they humbly pray that it may be fulfilled at the most speedy time.

We are, hon. sir, yours obedient servants,

	Tomas Archuleta y Samora.	Pedro Sisneres.
	Pedro Ignacio Fresquez.	Jose Canreli Montoya.
	Jose Manuel Fresques.	Anto. Laforet.
	Juan Julian Vigil.	Francisco Sisnerez.
	Wilson C. Hess.	Juan Pedro Trujillo.
60	Juan Montoya.	Jose Manuel Sisnerez.
	Pedro Ignacio Sisnerez.	Anto. Jesus Vigil.
	San Juan Duran.	Felipe Vigil.
	Juan de Jesus Montoya.	Juan Nepomoceno Mondragon.
	Miguel Anto. Gonzales.	Pedro Duran.
	Tomas Archuleta.	Juan Bautista Valdez.
	Raphael Lucas Sisnerez.	Juan Martin.
	Narciso Montoya.	Juan Andres Chavez.
	Juan de Jesus Bailon.	Jose Anto. Medina.
	Jose Anto. Rael.	Ma. Rosalia Baleria.
	Pedro Anto. Sisnerez.	Franzo. Archuleta.
	Maria Barbara Sanchez.	Diego Anto. Gonzales.
	Jose Leon Sisnerez.	Maria Pelegrina Otega.
	Pedro Ignacio Martinez.	Jose Franco. Martinez.
	Bartolo Salazar.	Jose Incar. Sandoval.
	Premisito Sisnerez.	Jesus Ma. Armenta.
	Teodoro Cruz.	Juan Bautista Martin.
	Juan Bautista Sierra.	Miguel Ortiz.
	Noscola Ortega.	Anto. Elias Velasquez.
	Diego Vigil.	Jose Dolores Gonzales.
	Gumisinda Garcia.	Juan Gonzales.
	Felipe Cordova.	Eulogio Vigil.
	Aloma Vasquez.	Santiago Velasquez.
	Florentino Garcia.	Anto. Domingo Cordova.
	J. M. Lesser.	Ma. Josepha Bielpan.
	Mathias Ortega.	Anto. Domingo Garcia.

By J. M. LESSER,
Attorney for the Foregoing.

I respectfully refer to the claim of Juan Carlos Santistevan et al. on file in your office in connection with the southern boundary of this claim of the town of San Antonio.

J. M. LESSER, *Attorney.*

(Endorsement:) File 153. Petition of claimants to surveyor-general. This document is duly recorded on pages 185, 186, and 187, vol. 4 of land claims records in office of surveyor-general.

61 DEFENDANT'S EXHIBIT A2.

Sor. Prefo del 1er. disto. de este departamento del Nuevo Mexico.

El C. Rafael Archuleta vecino y residente de la jurisdiccion Taos, á nombre de los suscritos en sustancia que acompaño, me presento ante V. S. con el debido respecto y sumision que debo, digo, Señr., que hallándonos escasos de tierras para sostener nuestras familias, hemos creido que los mas valdios se diese á los que se interesen cultivarlos para aumento de la agricultura; y con nuestras sabias leyes facultan al gobierno y á la prefa. para que los terenos valdios se den para aumento de la agricultura, y creyendo los qe. solicitamos el tereno en el punto del Rio Colorado es mui ameno para lo que lo solicitamos y sin perjuicio de tercero, pedimos á Vs., como mas inmediato, se nos conceda la peticion que solicitamos, dándosenos con amplitud el sitio con sus ejidos correspondientes, comprometiéndonos á no abandonar el tereno que solicitamos á menos de que no sea por una imbacion de los enemigos y que no seamos auxiliados; por todo lo cual pedimos y suplicamos se nos conceda nuestra solicitud que en hacerlo asi recibirémos gracia y merced, protestando y jurando no ser esta nuestra peticion de malicia en lo necesario, &c., y va esta nuestra presentacion en papel comun por no haber del que corresponde en este districto ni en Santa Fe, ni en ningun punto, obligándonos á pagar el tiple.

Rio Arriba Eno. 8, de 1842.

RAFAEL ARCHULETA.
ANTO. ELIAS ARMENTA.
MIGUEL MONTOYA.

RIO ARRIBA, *Eno. 8, de 1842.*

Como una de las atribuciones que corresponde á esta prefa. de mi cargo es la de mercenar y de determinar de los valdios que existen an la comprencion del distrito de mi cargo y teniendo en consideracion el miserable estado de los solicitantes y el fomento de la agricultura tan recomendada por las leyes, he (roto) en concederles como les concedo, á nombre de la Republica Mejicana, el tereno que tienen registrado para que se les de en posesion en los terminos que la ley señala, con tal que
62 no resulte en perjuicio de tercero como lo acreditó el informe del juez de paz en la instancia que presentaron en aquel jusgado los solicitantes, para lo cual y la posecion correspondiente pasarán con este decreto al juez de paz á donde corresponde el terreno que solicitan los presentantes, cuyo juez praticará las diligencias á Vs. correspondientes para constancia en todo tiempo y que sirba de titulo á los agraciados el Señor Don Juan Andres Archuleta, prefecto del primer districto de este departamento; asi lo decretó con migo el scri. de la prefa. de que certifico.

ARCHULETA.

POSECION.

En San Geronimo de Taos, en dies y nuebe dias del mes de enero de este presente año de mil ochociemtos cuarenta y dos, yo, el juez de pas de la primera y segunda demarcacion, por ministerio de ley de dhas. dos demarcaciones, Don Juan Anto. Martinez cumplimiento de lo mandado por el señor prefecto del primer districto, Don Juan Andres Arehuleta, como consta en el superior decreto fecha ocho del actual, á que sea tierra por posecion en Rio Colorado, y que se pratiquen las diligencias correspondientes y habiendo pasado al terreno, yo, dho. juez de paz, en compañia de dos testigos de asa., que lo fueron los C. C. Anto. Lovato y José Anto. Gutierres, hallándose el mencionado terreno libre y baldio, estando presentes treinta y sinco familias, les hise entender y saber la peticion que hicieron, y el superior decretó y les espresó, que para la dha. posecion habian de guardar y cumplir en toda forma todas las condiciones siguhentes: que el paraje prefijado ha de ser *h*asistido y nunca desamparado, y que los pastos y abrebaderos han de ser comunes para todos los habitantes, y que el terreno ha de ser comun, no solo á ellos sino para todos los que quepan en el mencionado terreno en lo susesivo; y que les agracia dho. terreno para laboriar con amplitud y pastear animales de todas clases; por lo consiguente, que respecto á lo arriesgado y frontieriso del paraje deberán mantenerse equipados de armas de fuego o flechas de lo que se les pasara muestra tanto en su entrada como en cualesquier
63 tiempo que lo hallara por conveniente el juez o jueces que las mandaran; bien entendidos que pasados dos años de la posecion, todas las armas que tubieren y puedan, deberán ser presisamente de fuego, pero bien abitadas para defensa de su posecion y nuestra amada patria, bajo la pena que el que asi no lo berificare el der. de dha. posecion igualmente que no tienen dor.; los colonizados en bender las tierras agraciadas hasta pasados cuatro años de cultivadas; que la plaza que fabriquen ha de ser en los terminos de bien amuralladas y fortificadas y en inter deberan situarse en dho. paraje y hacer sus jacales para que se alberguen sus familias; y habiendo oido y héchose cargo todos y cada uno de por si de las sitas ya referidas en su conformidad /respondieron de mancomun quedar impuestos y entendidos de lo que se les advierte; y en consequencia de lo cual los tomé por las manos y dije en claras y inteligibles voces en nombre del soberano congreso constituyente de la union y sin perjuicio de su nacional haber ni el de tercero, los pasié por dhas. tierras; arrancaron sacates, tiraron piedras y dieron voces de alegria, diciendo viva la soberania de la inclita nacion mexicana, y la autoridad constituida tomando posecion de dho. terreno quieta y pacificamente sin contradicion alguna, señalandoles los linderos y limites por el norte el Ojito de los Pinabetes y la punta del cerro de Gualupe, por el sur la cuesta o ceja del Rio Colorado, por el oriente la sierra, y por el poniente el cañoncito en donde junta el dho. cerro de Gualupe con el Rio Colorado, en cuyo ambito se contiene el terreno mercenado y midiéndoles las tierras de labor tocó á cada uno de los colonizados el numero de varas de tierra que constan y la lista de pobladores que son á línea recta una y otra banda del rio, quedando un sobrante al lado de arriba en el rito del cabresta sin repartir, y la cienega que está al frente de la plaza bien queda á beneficio de todos en comun; esto es lo que no se puede sembrar; y para abajo tam-

bien quedó otro sobrante sin repartir hasta la puerta del cañoncito; y igualmente queda dentro de la posecion la isla que está
64 en medio de los dos rios que es endonde se colonisó el C. Anto. Elias Armenta y su hijo politico Franco. Laforce, á quienes se les señalaron mas numero de varas de tierra que á los que les tocaron en linea recta, por ser la dha. isla de corta amplitud, y ser este Señor Armenta de los que se gozan el dro. de posecion en la peticion que hicieron, como tambien se gozan en la premacia los señores Rafael Archuleta y Migl. Montoya, queines hicieron todo el esfuerso posible para conseguir la posecion, advirtiéndoles á los colonizados que los pastos y abrebaderos son comunes como queda dho., y caminos de entradas y salidas á las plazas deben quedar amplios y libres por donde combenga; igualmente que las dhas. plazas deben tener de choreras por el rumbo del norte hasta la cejita que está cerca del monte, por el sur hasta el rillito que está al pie de la sejita endonde hechan agua para la plaza, por el oriente cuarenta varas para choreras y servidumbres y por el poniente otras cuarenta varas para el mismo objecto dho.; y para que en todo tiempo conste y les sirva de titulo y credencial á los colonizados y puedan colonizarse en lo susesivo, firmé el presente documento de posecion con los dos testigos de mi asa., con quienes autuo por reseptoria, á notoria falta de escribano publico, que no lo hay, en los señalados en los terminos del dro.: y en el presente papel comun por no haber del sellado, el que agregarán los interesados cuando lo haya; fecho ut supra doy fee.

JUAN ANTO. MARTIN [RUBRICA]

De asa. JUAN ANTO LOVATO [RUBRICA]
De asa. JOSE ANSC. GUTIERRES [RUBRICA]

NOTA.—Los C. C. que se colonizan en el sobrante de arriba en el Rito del Cabresto, de las cien varas de José Anto. Archuleta para arriba, quedan sujetos al plan del rio; de una y otra banda del rio; sin dro. á laboriar arriba en el llano de Gualupe; para que con el dro. de exidas igualmente en el citadollano como todos los pobladores y para la
65 debida constancia firmé y legalisé la presente nota con los testigos de mi asistencia en la fecha referida; que de todo doy fee.

JUAN ANTO. MARTIN [RUBRICA]

De asa. JUAN ANTO. LOVATO [RUBRICA]
De asa. JUAN ANTO. GUTIERRES [RUBRICA]

Sigue á continuacion la lista de los pobladores de San Anto. del Rio Colorado, con el numero de varas que cada colono se goza, a saber:

Nombres.	Número de varas.
C. José Anto. Archuleta	100 vras
C. Nicolás Martin	100 vras
C. Pablo Martin	100 vras
C. Anto. José Martin	100 vras
C. Seberino Martin	100 vras
C. Rafael Archuleta	100 vras
C. Manuel Sanches	100 vras
C. Rafael Martin decidió su deho. en Felipe Archuleta	100 vras
C. Rafael Candelario	100 vras
C. Santiago Gomes	100 vras
C. Franco Gomes	100 vras
C. Anto. Domingo Garcia	100 vras

Nombres.	Número de varas.
C. Manuel Anto. Garcia	100 vras
C. Míguel Sanches	100 vras
C. José Anto. Sanches	100 vras
C. Miguel Gomes	100 vras
C. Franco. Estéban Cordova	125 vras

Aquí queda la cienega y el sobrante que se puede lavoriar

C. Juan Christoval Madrid	100 vras
C. Bictor Sanches	100 vras
C. Manuel Gonzales	100 vras
C. Carlos Hortuvis	100 vras
C. Miguel Montolla	100 vras
C. Jose Anto. Gutierres, traspasó todo su derecho en el C. Antonio Belasques	100 vras
C. Anto. Segura	100 vras
C. Bentura Martin	100 vras
C. Estéban Truxio	100 vras
C. José Gabriel Truxio	100 vras
C. Juan Pedro Truxio	100 vras
C. Rafael Arifel	100 vras
C. Franco Montes	100 vras
C. José Hilario Montes	100 vras
C. Jes. Maria Montes	100 vras

66 DEFENDANT'S EXHIBIT A3.

To the prefect of the first district of New Mexico:

The citizen Rafael Archuleta, resident of the jurisdiction of Taos, in the names of those subscribed in the accompanying petition, present myself before your honor, with the due respect and submission that I owe, and say, sir, that finding ourselves in want of land for the support of our families, and believing that the public lands should be given to those who take an interest in developing them for the promotion of agriculture, and as our wise laws empower the governor and the prefecture to give the public lands for the increase of agriculture, and the petitioners believing that the land which we solicit at El Rio, Colorado, is very fertile for the purpose which we solicit it, and without injury to any third party, we ask of your honor, as the nearest, to grant our solicitation, giving us with amplitude the tract with its corresponding commons, obligating ourselves not to abandon the land that we ask for, unless it be on account of an invasion of the enemies and we should not receive aid. Wherefore we ask and request that our petition be granted, and by doing so we shall receive grace and mercy, protesting and swearing that our petition is not made in dissimulation, but what is necessary, &c. And this petition is made on common paper because there is none of the proper kind in this district, nor in Santa Fe, nor in any other place, binding ourselves to pay treble.

Rio Arriba, January 8, 1842.

RAFAEL ARCHULETA.
ANTONIO ELIAS HARMENTA.
MIGUEL MONTOYA.

RIO ARRIBA, *January 8, 1842.*

As one of the attributes pertaining to the prefecture under my charge is to donate and determine as to the public lands lying within the limits of the district under my charge, and taking into consideration the

miserable condition of the inhabitants and the promotion of agriculture, so much recommended by the laws, I have determined to, and do
67 grant them in the name of the Mexican Republic the land which they have registered, so that the possession of the same may be given to them in the manner prescribed by law, so that it may not result in injury to any third party, as assured in the report of the justice of the peace in the petition presented to that tribunal by the petitioners, for which and for the delivery of possession they shall go with this decree to the justice of the peace where the land solicited by the petitioners belongs, which justice shall carry out the proceedings to you pertaining, and that it may so appear all times and serve as a title to the grantees.

The Hon. Juan Andres Archuleta, prefect of the first district of this department, so decreed with me, the secretary of the prefecture. To which I certify.

ARCHULETA.

POSSESSION.

At San Geronimo de Taos, on the 19th day of January of the present year, 1842, I, the justice of the peace of the first and second demarcations by authority of the law of the said two demarcations, Juan Antonio Martin, in compliance with the order of the prefect of the first district, Don Juan Andres Archuleta, as set forth in the superior decree dated the 8th instant, it being that Red River be given in possession to them and that the proper proceedings *he* had, and having proceeded to the land I, said justice of the peace, in company with two attending witnesses, who were the citizens Juan Antonio Lovato and Jose Antonio Gutierrez, and the lands mentioned being free and public, there being present thirty-five families, I made known to them and to understand the petition that they had made, and the superior decree, and I stated to them that for the purpose of said possession they had to keep and comply with the following conditions: That the aforesaid place shall be settled and never abandoned, and that the pastures and watering places shall be common
68 for all the inhabitants and that the lands shall be common not only to them, but also for all for whom there may be room in said land for the pasture, and that said land is granted to them for the purpose of agriculture with the privilege of pasturing for stock of all kinds. Therefore, in view of the danger and exposed position of the frontier place, they shall keep themselves equipped with firearms and arrows, which shall be examined as much in their entrance as at any other time, that the judge or judges who command them may find it convenient, it being well understood that after two years of the possession all the arms that they may have shall be firearms, but well supplied for the defence of their possession and our beloved country, under the penalty that he who shall not so comply shall lose his right to said possession, and lokewise the colonists shall have no right to sell the lands granted until after they have been cultivated for four years, and that the town that they may build shall be well enclosed and fortified, and in the meantime they shall settle themselves in said place and build their cabins for the shelter of their families, and having heard and understood each and every one for himself of the said conditions as set forth, they answered in man comun that they remained well informed and understood what had been told them, and in view whereof I took them by the hand and

said in clear and intelligible words, in the name of the sovereign constituent Congress of the Union and without injury to the public treasury nor to any third party, I conducted them over said land. They plucked up grass, cast stones, and shouted with joy, saying, "Long live the sovereignty of the renowned Mexican nation and the constituted authority," taking possession of said land quietly and peaceably and without any contradiction whatever, designating to them the boundaries and limits—on the north, the little spring of the spruce pines, Ojito de los Pinabetes, and the point of the Gudalupe Hill, punta del Cerro de Guadalupe; on the south, the ridge or brow of Rio Colorado, Red River; on the east, the mountain, La Sierra, and on the west, the little cañon, Cañoncito,
69 where said Guadalupe Hill joins Red River, in which compass is contained the land granted, and measuring of the agricultural land there corresponded to each one of the colonists the number of varas mentioned in the list of settlers, the same being in a direct line on both sides of the river, there remaining a surplus on the upper side at the Rito (Creek) del Cabresto, without being distributed; and the meadow (cienega) in front of the town also remains for the benefit of all in common, that is to say, that which can not be cultivated, and below there remained also another surplus without being distributed up the mouth—puerta—of the cañoncito. There also remains within the possession the island lying between the two rivers, that being the place where the citizen Antonio Elias Armenta settled and his son-in-law Francisco Laforre, to whom were designated a greater number of varas of land than those to whom corresponded in a direct line on account that said island is of small extent, and this Mr. Armenta being according to the right of priority in the petition they made, they were also entitled to the right of priority Messrs. Rafael Archuleta and Miguel Montoya, who made every possible effort to obtain the possession, advising the colonists that the pastures and watering places are common, as remains stated, and the road for entrance and exits to the town shall remain ample and free where it may be deemed proper; also said plazas shall have drainage on the north side of the cejita—little brow—nears the woods, and on the south to the little river at the foot of the cejita—little brow—where the water is taken out for the plaza, on the east forty varas for drainage and easements, and on the west forty varas more for the purposes aforesaid, and that at all times it may so appear, and that it may serve as title and evidence to the colonists and to those who in the future may become colonists, I signed the present document of possession with my witnesses, with whom I act as special justice for the notorious want of a public notary, there being none as by law designated, and in the present common paper because
70 there is none of the sealed which will be attached by the parties interested when it may be obtained.

Dated ut supra, to which I certify.

JUAN ANTONIO MARTINEZ.

Attending witnesses:

JUAN ANTONIO LOVATO.
JOSE ANTONIO GUTIERREZ.

NOTE.—The citizens who shall colonize the surplus above, on the Cabresto Creek, from the hundred varas of Jose Antonio Archuleta up,

remain restricted to the bottom of the river on both sides thereof without the right to farm up on the prairie of Gualupe, but with equal rights to the commons in said prairie as that of all the settlers, and in due testimony thereof I signed and legalized the present note with my attending witnesses in the date aforesaid, to all of which I certify.

JUAN ANTONIO MARTINEZ.

Attending witnesses:

JUAN ANTONIO LOVATO.
JOSE ANTONIO GUTIERREZ.

The following is a list of the settlers of San Antonio del Rio Colorado, with the number of varas which each colonist enjoys:

Name.	Number of varas.
C. Jose Antonio Archuleta	100 varas
C. Pablo Martin	100 varas
C. Ceberino Martin	100 varas
C. Manuel Sanchez	100 varas
C. Rafael Candelario	100 varas
C. Santiago Gomez	100 varas
C. Francisco Gomez	100 varas
C. Manuel Antonio Garcia	100 varas
C. Miguel Sanchez	100 varas
C. Miguel Gomez	100 varas
C. Nicolas Martin	100 varas
C. Antonio Jose Martin	100 varas
C. Rafael Archuleta	100 varas
C. Rafael Martin-Decidio su derecho en Felipe Archuleta	100 varas
C. Antonio Domingo Garcia	100 varas
C. Jose Antonio Sanchez	100 varas
C. Francisco Esteban Cordova	125 varas
(Here remains the meadow and the surplus that can be cultivated.)	
C. Juan Christobal Madrid	100 varas
C. Manuel Gonzales	100 varas
C. Miguel Montoya	100 varas
C. Bentura Martin	100 varas
C. Esteban Truxio	100 varas
C. Rafael Canfel	100 varas
C. Francisco Montes	100 varas
C. Jose Maria Montes	100 varas
C. Bictor Sanchez	100 varas
C. Carlos Hurtado	100 varas
C. Jose Antonio Gutierrez transferred all his right to the citizen Antonio Belasquez	100 varas
C. Jose Hilario Montes	100 varas

71 SURVEYOR-GENERAL'S OFFICE,
Santa Fe, New Mexico, August 16, 1878.

The foregoing is a correct translation made by me from the original title papers in connection with the grant to Rafael Archuleta et al. in the Spanish language, now on file in this office.

AMADO CHAVES,
Clerk and Translator.

Subscribed and sworn to before me this 22 day of August, 1878.

HENRY M. ATKINSON,
Surveyor-General.

(Endorsement:) File 153. Translation of original grant. This document is duly recorded on pages 198, 199, 200, 201, 202, 203, 204, and

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

205, in vol. 4 of Land Claims Records in the office of the surveyor-general.

(Here follows map, marked p. 72.)

73 DEFENDANT'S EXHIBIT A5.

No. 76. Town of Rio Colorado.—Opinion.

This claim for land is brought before me under the eight' article of the treaty of Guadalupe Hidalgo of 2d Feb'y, 1848, and the act of Congress of July 22, 1854, establishing this office.

It is claimed as a village or community grant, and the record shows that it was made to Rafael Archuleta, Antonio Elias Armenta, and Miguel Montoya, on the 8th day of January, 1842, by Don Juan Andres Archuleta, prefect, having jurisdiction, and by his order they were afterwards, o' the 19th day of the same month, together with some thirty other heads of families, placed in formal possession, according to the usage then in vogue. They established a village and they and their descendants and legal representatives have occupied the property continuously since, without dispute.

Under instructions of the honorable Commissioner of the General Land Office, of August 21st, 1854, to this office, especially that portion thereof relating to established villages, and believing that it is proved that the village of San Antonio del Rio Colorado has existed since its foundation in 1842, holding the lands as claimed without question, I am of opinion that a good prima facie case is made by claimants, whether all original proceedings were regular or not, and therefore approve the claim and respectfully recommend that Congress confirm the same to the inhabitants of said village according to the boundaries set forth in the act of possession.

I transmit complete copies of the record in triplicate.

JAMES K. PROUDFIT,
U. S. Surveyor-General.

U. S. Surveyor-General's Office, Santa Fe, N. M., Jan. 6, 1874.

(Endorsement:) File 153. Surveyor-general's opinion. Approved Jan. 6, 1874. This document is duly recorded on pages 209 and 210, vol. 4, of Land Claim Records, in office of surveyor-general. Reported No. 76.

74 DEFENDANT'S EXHIBIT B1.

Hon. H. M. ATKINSON,
U. S. Surveyor-General of New Mexico:

Your petitioners, the owners of certain lands hereinafter mentioned and described, being heirs and legal representatives of Severino Martinez and Antonio Jose Martinez and others, respectfully represent:

That there was granted in fee to said Martinez first named, on the 4th day of August, 1815, by the governor and Captain-General of the Spanish province of New Mexico, a certain tract of land situate in the present county of Taos, in the Territory of New Mexico.

That the tract of land so granted was regularly given into the full legal possession of said grantees October 8th, 1815, by authority and order of said governor and Captain-General, and that the same has

remained in the quiet and undisputed possession and enjoyment of said grantee and his heirs and legal representatives from the date of said grant and act of possession to the present time.

That the boundaries of said granted tract of land as set forth in said act of possession are, on the west, the mouth of the cañoncito of said river, on the east by a large spruce-pine tree which stands above the Monton de Alamos, the upper boundary, and from the north to south from ridge to ridge, which objects are points well known and easily found.

That the tract of land granted to Antonio Jose Martinez and others, the second above named, was regularly given in possession, full and legal, to said grantees on the 13th day of November, 1835, by authority of Jose Mariano Jaramillo, alcalde of the 1st demarcation of Taos and its districts, under the Government of the Mexican Republic; that the said tract of land is situated in the present county of Taos, in the Territory of New Mexico; and the boundaries of said tract of land are, on the west, the Monton de Alamos and a large spruce-pine tree with a cross
75 marked on, on the east where the San Cristoval River, from the mountains, disembogues, and the boundaries on the north and south can be established by testimony before your honor.

That your petitioners are not able at this time to state the number of acres contained in said both granted premises, as there has never been made any survey or measurement of said tract of land, but we present herewith a plat or sketch maps showing approximately and as well as they can the boundaries and extent of said two grants.

That your petitioners do not have now in their possession the original concession from neither the Spanish Government nor the Mexican Government for said lands, nor it is within their knowledge where the same are now, or whether are yet in exist*a*nce, but your petitioners have made long and diligent search to find or procure the same and have not succeeded in doing so, and they believe the same have been lost, or mislaid, or destroyed, so that it cannot be had.

That your petitioners, however, herewith file an original certified copy of said concession, together with a sworn translation thereof from the Spanish into English, which copy was made and certified November 18th, 1835, by Jose Mariano Jaramillo, constitutional alcalde 1st vote of the jurisdiction of Taos and its districts, as appears from the certificate over his original and genuine signature attached to said certified copy.

That your petitioners claim a perfect title to said tracts of land by virtue of said grants, and of the stipulations and guarantees of the treaty of Guadalupe Hidalgo, between the Government of the United States and Mexico, and they pray that your honor investigate said title and approve the same to said heirs and legal representatives under the act of Congress of the 22nd July, 1854, establishing your office and providing for the investigation of private land claims derived from the Spanish and Mexican Governments in New Mexico.

DANIEL MARTINEZ AND OTHERS,
By SANTIAGO VALDEZ, *Their Attorney.*

76 (Endorsement:) File 121. Reported 110. Petition. This document is duly recorded in vol. 5, on pages 485, 486, and 487 of land claim records in office of surveyor-general. Filed Jan'y 19th, 1878. H. M. Atkinson, surveyor-general.

77 DEFENDANT'S EXHIBIT B 2.

Sello Cuarto. [SEAL.] Una Cuartilla.

Para los años de mil ochocientos treinta y cuatro y ochocientos treinta y cinco.

Dn. Mariano Xaramillo Alde., 1er. demarcacion de Taos y sus partidos. Certifico en la devida y competente forma del derecho, que en una presentacion del Presbitero Dn. Anto. José Martinez, en solicitud de tierra en el Rio de San Cristoval para si y otros ciudadanos, se halla un autuo que les hise de donacion en los terminos siguientes:

"En este puesto de San Geronimo de Taos, a los diez y seis dias del mes de Noviembre del año de mil ochocientos treinta y cinco, yo, el Alcalde Constitucional 1er. voto, Dn. José Mariano Xaramillo, atendiendo á la anterior presentacion del Presbitero Dn. Anto. José Martinez, pasé el dia trece del corriente al Rio de San Cristoval, observé su terreno, ví la donacion hecha al difunto Dn. Seberino Martinez, que consta desde el cañoncito de dho. Rio qe. cae al rio del Norte hasta arriba del Monton de Alamos donde está un pinabete grueso signado con una cruz, en cuyo trecho se contienen mil setecientas varas: de dho. pinabete para arriba se midieron cuatrocientas varas que en la donacion del dho. finado Martinez se hallan donadas al C. Juan Anto. Lucero; por lo tanto, á continuacion destas, doné cien varas al C. Anto. José Ortiz, otras cien al C. José Madrid, y llegó la medida á una tierra que sin haberle sido donada rompió el año de trienta y cuatro Dn. Pablo Lucero y sus dos hijos, dhos. Juan Anto Lucero, y Tomás Lucero, á la que *h*eché la medida, y salió contener de ancho quinientas sincuenta varas, á que agregándoles otras sincuenta para el lado de arriba son seiscientas mismas que el que solicita posecion del resto dejo libres para que la pudieran pretender los dhos. Luceros, que la comenzaron á ocupar, á quienes doné docientas á cada uno, bajo los mismos lineamientos que corren á continuacion; doné otras cien varas al C. Juan Anto. Salazar, y considerando que es corta la cantidad de agua y el terreno donado muy amplio, doné el terreno desde el dho. lindero
78 de arriba de Salazar hasta donde desemboca dho. Rio de la Sierra; doné, repito, todo este resto al mencionado representante Dn. Anto. José Martinez, el cual y todos los contenidos en esta donacion que les hise en nombre del Supremo Congreso Mejicano; e hicieron las correspondientes demostraciones de alegria, gritando vivas, y obsequiando al a*c*tual Gobierno que nos rige, y al Alde. que en su nombre hiso dha. donacion. Y yo, el mencionado Alcalde, á solicitud y suplica de los agraciados para que esta donacion se haga constante y baledera a favor de los mismos que en ella se esplican, para que interpusiera mi autoridad y judicial decreto, dije que la interponia e interpuse cuanto por derecho me es conferido, firmando conmigo dos testigos de mi asistencia que de todo doy fe.

JOSÉ MARIANO XARAMILLO.

Assa.: JOSÉ DE LA CRUZ VIGIL.
As.: JOSÉ MARIA VALDEZ.

Es copia de su original á que me refiero, siendo testigos los ciudadanos José de la Cruz Vigil y José Maria Valdez al verla copiar legalmente de

su original, quedando esta por documento á favor de los posecionados que constan en este documento; y para que conste lo firmé con los testigos de asistencia, á los dies y ocho dias del mes de noviembre de mil ochocientos treinta y sinco; de todo doy fe.

JOSÉ MNO. XARAMILLO. [RUBRICA.]

De as.: JOSE VIGIL. [RUBRICA.]
De as.: JOSE MARIA VALDEZ. [RUBRICA.]

Ytem copio el decreto del Sor. Gefe Politico y la donacion primitiva del dho. Rio de San Cristoval, y es como sigue:

"SANTA FEE, *4 de Agosto de 1815.*

"El alcalde de Taos tomará informes sobre el terreno que solicita el suplicante, y sin perjuicio de tercero se le puede dar suerte de tierra de labor en el Rio de San Cristoval, le mersenara las que pueda labrar en suelo realengo, con solar para casa, y corrales, siendo los pastos y aguas libres; y si hay proporcion para acomodar alli otros vecinos que pidan igual gracia, lo hara; advirtiéndoles que deben sercar sus labores para no cobrar daños.

"MAYNES."

79 El dia ocho del mes de octubre de este año de 1815. En atencion á la posesion que solicita Dn. Severino Martinez, pase con dho. señor el dia de esta fecha á mercenarle la tierra que solicita en el Rio de San Cristoval, y le mercené en el Ne. de Md., que Dios guarde, y le afirmé sus linderos en la manera siguiente: linda por el poniente la puerta del cañoncito del citado rio, por el oriente con un pinabete grueso que está arriba del monton de alamos, lindero del lado de arriba en donde le ordené al citado Martinez, lo afirmé con pintarle una cruz al mencionado pinabete y amontonarle piedras, y de Norte a Sur de cuchilla a cuchilla del lindero del oriente para arriba le hise la misma gracia, a Juan Anto. Lucero, en cuatrocientas varas de tierra, en cuyo paraje podrán fabricar casas y corrales; y para su mayor validacion lo firmé el dia dies del citado octubre, con dos testigos de mi asistencia, con la facultad que me es conferida como Alcalde Mayor de este Pueblo y su jurisdicion; de que doy fe.

PABLO LUCERO.

Asistencia: SIMON DE ARMENTA.
Asista.: JUAN DE DIOS ARMENTA.

Concuerda con su original a que me refiero y el cual pasé al archivo con el otro de que se sacó copia arriba; y para que conste, firmé con dos testigos de mi asistencia en San Fernando de Taos, á los dies y ocho dias del mes de nobiembre de mil ochocientos treinta y sinco.

JOSÉ MNO. XARAMILLO. [RUBRICA.]

De as.: JOSÉ VIGIL. [RUBRICA.]
De asa.: JOSÉ MARIA VALDEZ. [RUBRICA.]

(Endorsement:) File 121. Donacion del Rio de Sn. Cristobal. Año de 1835.

80 DEFENDANT'S EXHIBIT B3.

Seal fourth. [SEAL.] One cuartilla.

For the years one thousand eight hundred and thirty-four and eight hundred and thirty-five.

I, Mariano Xaramillo, alcalde of the 1st demarcation of Taos and its districts, do certify, in due and full form of law, that upon a petition of Priest Antonio Jose Martinez, asking for land on the San Cristoval River, for himself and other citizens, there is found a decree which I made to them of donation in the following terms:

"At this place of San Geronimo de Taos, on the sixteenth day of the month of November, in the year one thousand eight hundred and thirty-five, I, Jose Mariano Xaramillo, constitutional alcalde of 1st vote, in attention to the foregoing petition of Priest Antonio Jose Martinez, proceeded on the 13th inst. to the San Cristoval River, examined the land tract, saw the donation made to Severino Martinez, deceased, which embraced from the cañoncito of said river, which runs towards the Rio del Norte up to the Monton de Alamos, where there is a spruce pine tree, marked with a cross on it, which space contains one thousand seven hundred varas; from said spruce pine upwards there were measured four hundred varas, which, in the donation of said Martinez, deceased, are donated to the citizen Juan Antonio Lucero; therefore, in continuation of the same, I donated one hundred varas to citizen Antonio Jose Ortiz, another hundred to citizen Jose Madrid, and the measurement reached to a tract of land which, without having been donated to him, was broken up in the year thirty-four by Pablo Lucero and his said two sons, Juan Antonio Lucero and Tomas Lucero, which I measured, and it resulted in containing in width five hundred and fifty varas, attaching thereto fifty more on the upper side, making six hundred, the same which the solicitor of the possession of the rest left free to be applied for by the said Luceros, who commenced to occupy the same, and to each of whom I donated two hundred varas within the same limits; in continuation I donated another hundred varas to citizen Juan Antonio Salazar, and considering
81 that the quantity of water and that the land donated very ample, I donated the balance from said boundary above of Salazar to where the said river from the mountains disembogues. I donated, I repeat, all this balance to the said representatives Antonio Jose Martinez, who, as well as all the others mentioned in this donation, which I made to them in the name of the supreme Mexican Congress, expressed the proper demonstrations of joy, shouting huzzas and praising the present Government which governs us, and the alcalde, who in its name made said donation, and I, said alcalde, at the request and prayer of the grantees, in order that this donation may be permanent and valid in favor of the same persons therein named, I should interpose my authority and judicial decree, I declared that I would, and I did interpose the same as fully as I am empowered by law, signing with me two witnesses of my attendance, to all of which I certify.

JOSE MARIANO XARAMILLO.

Attendance: JOSE VIGIL.
Attendance: JOSE MARIA VALDEZ.

This is a copy of the original to which I refer, the citizens Juan de la Cruz Vigil and Jose Maria Valdez being witnesses to seeing legally transcribed from its original, this remaining as the title in favor of those placed in possession, who are named in this document, and that it may so appear I signed the same with my attending witnesses on the eighth day of the month of November, one thousand eight hundred and thirty-five, to all of which I certify.

JOSE MARIANO XARAMILLO.

Attendance: JOSE VIGIL.
Attendance: JOSE MARIA VALDEZ.

82 Ytem. I transcribe the decree of the political chief and the primary donation to the said San Cristoval River, and it is as follows:

"SANTA FE, *August 4, 1815.*

The alcalde of Taos will procure information concerning the land applied for by the applicant, and without prejudice to any third party he may give pieces to him of cultivable land on the San Cristoval River, and he will grant to him as much as he can till upon public domain, with a lot for building and corrals, the pastures and waters being free; and if there is space there to accommodate other citizens who may ask like grace he will do so, advising them that they shall enclose their fields in order not to claim damages.

MAYNES."

On the eighth day of the month of October, in the year 1815, in attention to the possession which Severino Martinez solicits, I proceeded with that gentleman on the day of the date hereof to grant him the land he applied for on the San Cristobal River, and granted to him in the name of His Majesty, who may God preserve, and I established his boundaries in the following manner: Bounds on the west by the mouth of the cañoncito of said river, on the east by a large spruce pine tree which stands above the Monton de Alamos, the upper boundary, where I ordered said Martinez to establish it by marking a cross on said spruce pine tree and pile stones around it, and from north to south from ridge to ridge, from the eastern boundary upwards. I granted the same grace to Juan Antonio Lucero of four hundred varas of land, at which place they may build houses and corrals; and for its greater validity I signed this on the tenth day of said October with two witnesses of my attendance, with the power upon me conferred as chief alcalde of this pueblo and its jurisdictions, to which I certify.

PABLO LUCERO.

83 Attendance: SIMON DE ARMENTA.
Attendance: JUAN DE DIOS ARMENTA.

This agrees with its original, to which I refer, and which I transmitted to the archives with the other from which I above took a copy, and that it may be appear I signed with two witnesses of my attendance in San Fernando de Taos on the eighteenth day of the month of November, one thousand eight hundred and thirty-five.

JOSE MA. XARAMILLO.

Attendance: JOSE VIGIL.
Attendance: JOSE MARIA VALDEZ.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

The foregoing five pages contain a correct translation, to the best of my knowledge and belief, from the original thereof in Spanish, out of which the same was by me translated.

SANTIAGO VALDEZ.

Subscribed and sworn to before me this January 18, 1878.

H. M. ATKINSON,
Surveyor-General.

(Endorsement:) File 121. Translation of original Spanish. Filed by S. V., Jan. 19/78. Recorded on pages 492, 493, 395 and 496, vol. 5, Land Claim Records, in the office of the surveyor-general.

(Here follow diagrams marked pp. 84, 85 & 86.)

87 DEFENDANT'S EXHIBIT B.

Surveyor-general's opinion.

MARTINEZ AND MARTINEZ
versus
UNITED STATES.

No. 110. SURVEYOR-GENERAL'S OFFICE,
Santa Fe, New Mexico, October 4, 1878.

These claims for two contiguous tracts of land situate in the present county of Taos, Territory of New Mexico, were filed in this office January 19, 1878, by the claimants, who represent themselves to be the heirs and legal representatives of the alleged grantees. The papers which represent the muniments of title do not purport to be originals, but are represented as copies thereof certified to by Jose Mariano Xaramillo, alcalde of the first demarcation of Taos and its districts, the certificate being dated November 18, 1835. The claims presented under these documents are—

First. A grant alleged to have been made to Severino Martinez, August 4, 1815, by Governor Maynes, by authority of which possession is claimed to have been given October 8, 1815, by Pablo Lucero, alcalde of Taos, at the request of the grantee.

Second. Under a clause in the alleged grant to Severino Martinez, August 4, 1815, directing the alcalde that in the event "there is space to accommodate other citizens who may ask like grace he will do so." On the 16th day of November, 1835, Jose Mariano Xaramillo, alcalde of the first demarcation of Taos, upon the petition of priest Antonio Jose Martinez, places the petitioner in possession of a certain tract adjoining that claimed to have been granted to Severino Martinez, and executed to him the usual act of possession, basing his authority for the act upon the said grant to Severino Martinez made in 1815.

88 There is no record of any such grant or grants among the old Spanish archives now in the possession of this office, and the claimants allege the loss or destruction of the original title papers which were formerly in the possession of the grantee, who, they assert, caused the same to be filed in the archives at Taos, and that they were destroyed with other documents at the time of the insurrection in 1847. There is, in fact, no positive evidence that the original title papers, if they

ever existed, were transmitted to the archives at Taos. The alcalde states in his certificate of November 18, 1835, to this copy, that the transmitted the originals to the archives, and it is claimed that the archives of Taos were by him referred to, yet it is not yet so established by the testimony. It is considered a singular circumstance that the grant should have been held by the grantee for twenty years in his possession and then should be transmitted to the archives, although there may be no significance which would attach to it if explained.

The law under which the grant to Severino Martinez was made required a settlement upon the land and residence thereon, yet there is no evidence that the conditions imposed by the Spanish law were ever complied with in those particulars, but, on the contrary, the evidence upon cross-examination is to the effect that none of the descendants of the original grantee, or the grantee Severino Martinez, ever resided upon the tract in person, although it is established that the peons of the claimants have resided there, but this is not deemed to be a compliance with the law existing at that period in relation to the required residence, etc., upon the tract.

The act of the alcalde in giving possession to priest Antonio Jose Martinez to the land described in the act of possession of November 16, 1835, based upon the alleged authority claimed to have been conferred in the grant to Severino Martinez in 1815, was illegal and void. It is no grant, and did not vest in Antonio Jose Martinez any right to the tract therein described, and the said claim is rejected.

89 The claim under the alleged grant to Severino Martinez is a questionable one, and as presented on the alleged copies of the title papers is also rejected.

HENRY M. ATKINSON,
Surveyor-General.

(Endorsement:) File 121. Severino and Antonio J. Martinez. Opinion of the surveyor-general. October 4, 1878. Recorded on pages 516, 517, and 518, vol. 5, land claim records in the office of the surveyor-general Reported No. 110.

90 And be it further remembered that thereafter, to wit, on the 2nd day of June, 1896, the court rendered its decision in the words and figures following, to wit:

91 In the United States Court of Private Land Claims.

CLARENCE P. ELDER ET AL.	)	
vs.	)	No. 108. Cebolla grant.
THE UNITED STATES.	)	

Decree of confirmation.

This cause, coming on for hearing and determination, and after full legal proof in the premises being had and counsel having been heard, and the court having considered the same and the pleadings herein, and now being fully advised in the premises, and it thereupon appearing to the court that the said petitioners, for themselves and on behalf of all other owners in the said tract of land, are entitled to the relief as prayed

for in the said petition, and that the validity and extent of the said land grant being enquired into and decided by the court, the court finds as follows:

First, that on the thirty-first day of December, A. D. 1845, Manuel Armijo, governor of New Mexico, then a department of the Mexican Republic, made, according to the laws, usages, and customs of said Republic, a grant of land to Juan Carlos Santistevan, Jose Manuel Garcia, Julian Santistevan, Carlos Ortivis, and Tomas Ortivis, said land lying and being situate in what is now known as the county of Taos, in the Territory of New Mexico.

That the boundaries of said tract or grant are and shall be surveyed to be as follows:

Beginning at the mouth of the Rio Colorado, at the point of junction of said stream with the edge of the rock bluffs or bank
92 of the Rio Grande, thence southward along the edge of said rock bluffs or eastern bank of the Rio Grande to a point opposite the top of the ridge or divide next south of the Canada Garrapata; thence along the top of said divide eastward to the summit of the mountain, on the western slope of which are the sources of the Lama River or stream; thence along the summit of said mountains northward to a point east of the ridge or divide between the said Lama and the Colorada rivers; thence westward along the top of said divide to the Rio Colorado at the mouth of the said Lama; thence along the southern bank of the Rio Colorado to the place of beginning.

That upon the making of said grant to the said original grantees they were in due form of law placed in juridical possession thereof, and that the grantees and their heirs and assigns have held possession of the said tract and grant of land from the time of the making and concession of the same to them up to the present time.

That said grant has not been heretofore confirmed in whole or in part by the Congress of the United States, or any other lawful authority of the United States.

It is therefore, on this second day of December, A. D. 1896, hereby ordered, adjudged, and decreed by this court that the title and claim in and to said lands and real estate within the boundaries hereinbefore set forth is a good and valid title and claim to said land under the treaty between the United States and the Republic of Mexico known as the treaty of Guadalupe-Hidalgo and under the laws, ordinances, usages, and customs of the Government of the Republic of Mexico; and that the title to said tract of land as described with the boundaries aforesaid be, and the same is hereby, established and confirmed forever to the heirs and assigns of said five original grantees and to their heirs and assigns, free and discharged from any and all claims and demands for or against the same on the part of the United States; always excepting from
93 this confirmation any part of said land that may have been disposed of by the United States, and the confirmation or allowance of said claim shall not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same, all such mines and minerals remaining the property of the United States.

By the court:

WILBUR F. STONE,
Asso. Justice C. P. L. C.

94 CLARENCE P. ELDER
vs.
THE UNITED STATES. } No. 108. Cebolla grant.

Opinion.

This is a grant of a tract of land comprising the valley of a small stream known as the Lama, in the county of Taos. The documentary evidence shows that the grant was made in the year 1845 by Armijo, then the governor of this province, under the authority of the Republic of Mexico. The grant was petitioned for by five citizens, named Juan Carlos Santistevan, Jose Manuel Garcia, Julian Santistevan, Carlos Ortivas, and Tomas Ortivas, all of whom were duly placed in juridical possession of the land granted. The testimony showing the substantial compliance with the conditions of the grant, by possession, improvement, etc., and the deraignment of title by Clarence P. Elder, the claimant, through a series of conveyances from the original grantees is considered sufficient to support the claim of title and warrant confirmation by the court.

The only contention on the part of the Government demanding consideration is in respect to the north and south boundaries of the tract. The petitioners to the governor asked for "a vacant tract, very suitable for cultivation, irrigable from certain water said to be from the Lama, quite sufficient for its irrigation, at the place called the Cebolla, which places are between the settlements of the Rio Colorado and San Cristobal." The alcalde who placed the grantees in juridical possession states in his report thereof that such possession was taken by them "as being lawful proprietors of the land which they wished to irrigate with the water of the valley of the Lama, as relying upon that small water source they had applied for the donation; and I therefore designate to them for limits: on the north the boundaries of the Rio Colorado grant; on the south to where the dividing line of San Cristobal is reached; on the east the mountain, and on the west the edge of the bluff of the Rio del Norte." * * *

The plaintiff claims as northern boundary the top of the bluffs or ridge forming the southern bank of the Rio Colorado; and as the *the*
95 southern boundary a point at an acequia claimed to be the northern limit of cultivation of the San Cristobal grant or settlement; while the counsel for the Government contends that the proper boundaries should be, and were intended to be, the respective ridges enclosing and bounding naturally the valley of the Lama on the northern and southern sides. In support of this contention testimony was offered and heard showing that there is a wide stretch of high table land forming the divide between the Lama Valley on the north and the bluffs two or three miles further north constituting the south bank of the Rio Colorado; and that there is a valley or depression called the Canada Garrapata between the first ridge south of the Lama Valley and another ridge at a considerable distance further south *tw*oards the San Cristobal. The southern boundary of the Rio Colorado grant, which was to be the northern boundary of the Cebolla grant, is not fixed so as to be used as the defined boundary for the northern limits of the Cebolla grant, in as much as the said Rio Colorado grant was rejected on hearing by this court for want of competent authority to make that grant; but from what can be

gl'aned from the rather vague and misty evidence respecting the southern limits of that grant and its claimed possession in that direction, it would appear that such limits were a considerable distance, perhaps near a league, south of the Rio Colorado, and not at the edge of the bluffs close to the stream. Be that as it may, taking the weight of all the testimony heard on the trial of that case touching the southern boundary or limits of the possessions claimed for the Rio Colorado grant, together with that relating to the northern limit of possession of the San Cristobal settlers, and considering also the physical conformation and topography of the country, shown in connection with the prayer of the original petitioners for this Cebolla tract, coupled with the language employed in the act of possession designating the limits and expressing to some extent what appeared at the time to the alcalde to be the intent of the original grantees in praying for this tract and in receiving possession, we incline to side with the views contended for by the counsel for the Government as to the proper intended boundaries on the north ans south sides.

96 For these reasons, a decree will be entered confirming the grant as prayed by the claimant, but with the following specific boundaries, to wit: On the north, the top of the ridge or divide between the Lama and the Rio Colorado; on the east, the summit of the mountain or main range east of the source of the Lama; on the south, the top of the ridge or divide next south of the Canada Garrapata; and on the west by the edge of the rock bluff of the Del Norte or Rio Grande River.

(By Stone, A. J.)

(Mr. Justice Murray dissents from the conclusions of the majority, for reasons he will present.)

(Indorsed:) No. 108. Opinion of the court.

97 In the Court of Private Land Claims, Santa Fe, New Mexico, August term, 1896.

CLARENCE P. ELDER, ET AL., *versus* UNITED STATES. } No. 108. Juan C. Santistevan grant.

Dissenting opinion by Murray, associate justice.

The grant in this cause (if it can be called a grant) was made in 1845. At that date the governor had no power to make it, and certainly no power to delegate such authority to a prefect, as was done in this case. The grant is not recorded as required by the regulations of 1828, but in as much as my views on that subject are fully set out in a dissenting opinion in the Petaca case, they will not be repeated here. I will, however, refer to a few decisions of the Supreme Court of the United States, not cited in that case, in which it is held that if there is no record evidence that a Mexican grant was ever issued, and its non-existence is not accounted for, such grant should be rejected. (See U. S. versus Teshmaker, 22 Howard, 59; White versus U. S., 1 Wallace, 666; U. S. ver'us Bolton, 23 Howard, 341; U. S. versus Osio, 23 Howard, 279, 280.)

In the Osio case it is true the grant was rejected on the ground that the governor had no power to make it, but the law is expressly laid down by the court to be, that adjudications of land titles were required by Mexican law to be recorded, but that the requirement was fulfilled according to the practice in the department of California, where a short entry is made in a book kept for that purpose, specifying the number of the expediente, the date of the grant, and a brief description of the land granted, and the name of the person to whom the grant was issued. There is no pretense that the grant in question was ever recorded anywhere, or deposited in the public archives of Mexico. It is neither lawfully nor regularly made, and therefore not one which this court is authorized to confirm. (See subdivision 1 of section 13, act of March 3, 1891; Reynolds' Compilation, page 14.)

WILLIAM W. MURRAY.

98 UNITED STATES OF AMERICA, ss.

Court of Private Land Claims, Santa Fe district.

CLARENCE P. ELDER, SMITH SIMPSON, et al., plaintiffs and appellee,
vs.
THE UNITED STATES, DEFENDANT AND appellant.

No. 108. Ceboya or Juan C. Santistevan grant.

The above-named defendant, the United States, considering itself aggrieved by the decree entered on the 2nd day of December, 1896, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed and a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

The said defendant shows to the court here that the statement in said cause by the United States attorney to the Attorney-General, required by sec. 9 of the act of Congress establishing this court, approved March 3, 1891, was not received by the Attorney-General within sixty days next after the rendition of judgment therein, but was made on the 28th day of June, 1897, and was received by the Attorney-General on the 3rd day of July, 1897.

MATT. G. REYNOLDS,
U. S. Attorney for Defendant and Appellant.

And now, to wit, on the 2nd day of October, 1897, it appearing to the satisfaction of the court that the statement in said cause, required to be made by the U. S. attorney to the Attorney-General by sec. 9 of the act of Congress establishing this court, was not received by the Attorney-General within sixty days next after the rendition of the judgment therein, but was made on, to wit, the 28th day of June, 1897, and was
99 received by the Attorney-General on the 3rd day of July, 1897.

It is ordered that an appeal be, and hereby is, allowed as prayed for.

JOSEPH R. REED,
Chief Justice.

100 UNITED STATES OF AMERICA, *ss.*

Citation on appeal to the Supreme Court.

The President of the United States to Clarence P. Elder, Smith Simpson, and Thomas B. Catron et al., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellees, being case No. 108 on the docket of said court, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this second day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

WILBUR F. STONE,
Associate Justice, Court of Private Land Claims.

We hereby acknowledge service of the foregoing citation for and on behalf of the plaintiffs and appellees this 14th day of October, 1897.

CATRON & GORTNER,
Attorneys for Appellees.

(Indorsed:) 108. Clarence P. Elder et al. vs. United States. Filed Oct. 15, 1897. James H. Reeder, clerk, by Ireneo L. Chaves, dep'ty.

101 And be it further remembered that thereafter, to wit, on the 24th day of November, A. D. 1897, a stipulation was filed in the office of the clerk, which said stipulation is in the words and figures following:

102 In the Court of Private Land Claims, Santa Fe district, 1897.

CLARENCE P. ELDER ET AL.
vs.
UNITED STATES. } No. 108. Juan C. Santistevan grant.

Stipulation.

It is stipulated and agreed between the parties herein that the deeds introduced in evidence on the trial of said cause, and other papers showing derangement of title, as shown by the transcript of the trial, need not be embodied in the record on appeal.

It is further stipulated and agreed that the plaintiffs herein have by virtue of said deeds succeeded to the right, title, and interest, if any, held by the original grantees to an extent such that the Court of Private Land Claims has jurisdiction to entertain their petition herein.

This November 24, 1897.

CATRON & GORTNER,
Attorneys for Plaintiffs.
MATT. G. REYNOLDS,
Attorney for Defendants.

103 UNITED STATES OF AMERICA,
Territory of New Mexico:

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing 103 pages contain a full, true, and perfect transcript of all the papers, pleadings, record entries of proceedings, and evidence in the cause lately pending in said court, wherein Clarence P. Elder et al. were petitioners and the United States were defendant, except certain original exhibits named in a stipulation of said parties filed in my office November , 1897, which is included in this transcript.

Witness my hand and the seal of said court at Santa Fe, New Mexico, this 24 day of November, 1897.

[SEAL.] JAMES H. REEDER, *Clerk.*
Per IRENEO L. CHAVES, *Deputy.*

(Indorsement on cover:) Case No. 16734. Court of Private Land Claims. Term No. 200. The United States, appellant, vs. Clarence P. Elder, Smith Simpson, Thomas B. Catron, et al. Filed November 30, 1897. Office Supreme Court of U. S. Received Nov. 30, 1897.

[redacted]

[redacted]

In the Supreme Court of the United States.

October Term, 1895.

THE UNITED STATES, APPELLANT,
v.
CHARLES F. ELDER ET AL.,
No. 35.

PECOS GRANT, IN NEW MEXICO.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE UNITED STATES, APPELLANT,
v.
CLARENCE P. ELDER ET AL. } No. 35.

CEBOLLA GRANT, IN NEW MEXICO.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

This suit was instituted in the Court of Private Land Claims on February 18, 1893, by Clarence P. Elder and Thomas B. Catron filing their petition for the confirmation of the Juan C. Santistevan or Cebolla grant, situate in Taos County, N. Mex.

In that petition (R., 1, 2) it is alleged that on December 31, 1845, Manuel Armijo, governor of New Mexico, made a grant of the tract in question to Juan Carlos Santistevan and four others, the boundaries of the same being described as follows:

> On the north, by the limits of the Rio Colorado tract; on the south, by the dividing line of the San Cristoval; on the east by the mountains, and on the west by the rocky bluffs of the Rio del Norte.

That under the provisions of the act of Congress of July 22, 1854, the surveyor-general of New Mexico, on March 23, 1872, recommended this grant for confirmation by Congress, and that a survey of the same was made in November, 1877, under the direction of the General Land Office, which was approved by the surveyor-general of New Mexico, according to which said grant contains 17,159.57 acres, but claimants allege that said survey was not made in accordance with the boundaries set forth in the original documents of said grant.

It was further alleged that the petitioners were the owners in fee of said grant, which had been in the peaceable and undisputed possession of the original grantees, their heirs, and legal representatives from the making of the grant to the present time; that the title of the original grantees, their heirs, and assigns was complete and perfect when the United States acquired sovereignty over the Territory of New Mexico.

With other formal allegations, the petition closed with the usual prayer for confirmation.

The United States filed an answer (R., 3, 4), putting in issue the allegations of claimants' petition.

On August 28, 1896, the cause came on for trial, when the plaintiffs tendered in evidence their title papers (R., 33–38). The genuineness of these documents was not questioned by the Government, and the only criticism it made as to them was that the indorsement thereon by Governor Armijo (R., 36), dated December 31, 1845, did not constitute a grant of the land. This indorsement is as follows:

> SANTA FE, *December 31, 1845.*
>
> To the prefect of the district to ascertain if the land asked for has no owner and to cause the corresponding justice to give the possession the petitioner refers to.
>
> ARMIJO, [Rubric.]
> JUAN BAUTISTA VIGIL Y ALARID, [Rubric.]
> *Secretary.*

Documentary evidence, tending to connect the plaintiffs with the original grantees, was received (R., 5, 6), and it is stipulated by the Government on this appeal (R., 65) that claimants have sufficiently connected themselves with the original grantees to invoke the jurisdiction of the Court of Private Land Claims.

There was also oral evidence showing some possession by the original grantees and those claiming under them. (R., 8, 9, 17, 20, 22, 23.) This evidence is mostly as to possession since the date of the treaty. The depositions of witnesses examined in the proceedings before the surveyor-general in 1872 were also introduced in evidence by the claimants (R., 41, 42), which tended to establish the authenticity of the grant papers and show some possession by the original grantees.

The only issue of fact developed at the trial was as to

the location of the north and south boundaries of the grant, and upon these two points the testimony of old residents of that section was presented by both parties, which forms the bulk of the oral testimony at the trial. (R., 6–32.)

The petition to the governor, properly translated (see Appendix One), asked for "a vacant tract, very suitable for cultivation, irrigable from certain water which they call [the water] of the Lama, quite sufficient for its irrigation, at the place which is so called and even another place which they call the Sebolla, and which are between the settlement of the Rio Colorado and San Cristobal." The report of the alcalde who placed the grantees in juridical possession states that such possession was taken by them "as being lawful proprietors of the land which they wish to irrigate with the waters of the valley of the Lama, as, relying upon that small water source, they had applied for the donation; and I therefore designated to them for limits on the north, the boundaries of the Rio Colorado grant; on the south, to where the dividing line of San Cristobal is reached; on the east the mountain, and on the west the edge of the bluff of the Rio del Norte," etc. (R., 37.)

The plaintiffs claimed as their northern boundary the top of the bluff or ridge forming the southern bank of the Rio Colorado; and as their southern boundary a point at an acequia claimed to be the northern limits of cultivation of the San Cristobal grant or settlement.

The Government introduced in evidence the proceedings had before the surveyor-general in relation to the Rio Colorado grant and the Rio de San Cristobal grant,

and the original grant papers in each case (R., 44–60), for the purpose of showing their boundaries as bearing upon this grant.

The Government contended that the proper boundaries of this tract should be and were intended to be the respective ridges inclosing and bounding naturally the valley of the Lama River on the northern and southern sides, and in support thereof testimony was heard showing that there is a wide stretch of high table-land between the Lama Valley on the north and the bluffs 2 or 3 miles farther north, which constitute the south bank of the Rio Colorado, and that there is a valley or depression, called the Cañada Garrapata, between the first ridge south of the Lama Valley and another ridge a considerable distance farther south toward the San Cristobal. (R., 24–31.)

The legal propositions contended for by the Government, among others, were, *first*, that the governor had no authority at the date of this grant to make the same; *second*, that even if he had authority the indorsement by Governor Armijo on the muniments of title was not a grant; *third*, that even assuming the indorsement to be a grant and Armijo to have had authority to make it, the claim as presented was not such a one as the Court of Private Land Claims was authorized to confirm; *fourth*, that if the claim should be adjudged entitled to confirmation only the irrigable or cultivable lands within the limits named in the act of possession should be confirmed; and that the east boundary mentioned in said act of possession should be fixed at the foot and not the summit of the mountain.

On September 5, 1896, the court, through Mr. Justice Stone, announced its decision (R., 62, 63), holding the title paper presented to be a grant entitled to confirmation to the outboundaries named in the act of possession, extending to the top of the mountain on the east, but fixing the north and south boundaries as contended for by the Government. A decree of confirmation was entered on December 2, 1896.

The United States prayed an appeal, and the same having been allowed (R., 64), the cause is now before this court for determination.

ARGUMENT.

The decision of the Court of Private Land Claims should be reversed and the claim rejected for the following reasons:

1. The departmental governor had no authority at the date of this grant to make the same.

2. Even if he had such authority, the indorsement by Governor Armijo in the muniments of title here presented is not a grant.

3. Assuming this indorsement to be a grant and to have been made under the colonization law of August 18, 1824, and the regulations of November 21, 1828, as contended for by claimants, and as held by the court, this is not such a claim as the Court of Private Land Claims had jurisdiction to confirm.

4. This claim can not be confirmed for the reason that there is no archive evidence of the same and no record of the alleged grant in the archives derived from the former government.

5. The confirmation in this case is excessive in that it is for the entire tract within the boundaries named by the alcalde instead of for only the irrigable or cultivable lands within said boundaries, and in that the east boundary is fixed at the summit of the mountain instead of at the foot.

I.

The departmental governor had no authority at the date of this grant to make the same.

The date of the order of Governor Armijo relied upon as a grant is December 31, 1845. At this date there was no power in the governor of the department of New Mexico to make a grant, certainly none to make a gratuitous concession such as this. This subject has already been fully discussed in the brief for the United States filed in this court in the case of *Luis M. Ortiz et al.* v. *United States*, No. 20, on the docket for the present term. It does not seem necessary to repeat the considerations there urged under point *one*, which are entirely applicable to the claim here asserted.

II.

Even if the departmental governor had authority to make a grant, the indorsement by Governor Armijo on the muniments of title here presented is not a grant.

The translation of the title papers, filed by claimants, is inaccurate in a number of respects, and a translation of the same prepared on behalf of the Government is attached to this brief as Appendix number *one*. From

this document it will be seen that the order made by Armijo on the petition presented by claimants is as follows:

> SANTA FE, *December 31, 1845.*
>
> To the prefect of the district to ascertain if the lands asked for has no owner and to cause the corresponding justice to give the possession the petitioner refers to.
>
> ARMIJO. [Rubric.]
> JUAN BAUTISTA VIGIL Y ALARID, [Rubric.]
> *Secretary.*

The only theory upon which the power of the governor to act at all in this matter can be sustained is that he was authorized so to do by the colonization law of August 18, 1824 (Reynolds, p. 121), and the regulations pursuant thereto, dated November 21, 1828. (Reynolds, p. 141.) These regulations provide (sections 3 and 4) as follows:

> 3. The political chief shall proceed immediately to obtain the necessary information as to whether or not the conditions required by said law of the 18th of August are found in the application, both as regards the land and the applicant, either that this latter be attended to simply or that he be preferred, and shall at the same time hear the respective municipal authority as to whether any objection or not is found to the grant.
>
> 4. In view of all of which the political chief shall grant or not said application, in strict conformity with the law applicable to the matter, especially with that of the 18th of August, 1824, already cited.

In *Cambuston's Case* (20 How., 59) this court construes the regulations of 1828, just quoted in part, as providing (1) that the governors may make grants to persons who

ask for them for purpose of cultivation and inhabiting same; (2) applicant shall address a petition, giving name, country, and religion and describing lands by means of a map; (3) political chief or governor shall institute inquiry as to the propriety of the grant; (4) shall then accede or not in conformity to the law; (5) definitive grant asked for being made, a document, signed by the governor, shall be given to serve as a title; (6) the necessary record shall be kept in a book provided for that purpose, etc.

Thus it was the duty of the governor to "institute inquiry as to the propriety of the grant." This, it is assumed, he attempted to do by the above-quoted reference to the prefect. The prefect got rid of the responsibility by referring the matter to the justice of the peace. Until the prefect had reported to the governor, or the latter had secured information in other ways, the grant could not legally be made. Inquiry as to the propriety of the grant must necessarily precede the grant. This throws light on the order of Armijo, above quoted, and the latter portion thereof wherein the prefect is directed to cause the corresponding justice to give the possessions the petitioners refer to. This could not have been possession under the grant, for that had not yet been made, and indeed could not legally be made until the coming in of the prefect's report. The possession thus referred to must therefore have been a temporary possession, one ordered in view of the urgent present needs of the claimants who were there near the premises, a mere permissive possession whose development into a title depended entirely upon whether the governor in view of the whole investigation should "grant or not said application in

strict conformity to the law applicable to the matter." Had the order of the governor contained a direction to the prefect to report back to him for his further action in the premises, it would hardly be contended that that order constituted a transfer of title; and yet the regulations of 1828, when read into the order of the governor, as they must be if he was acting under them, made it as much the duty of the prefect to report back his investigation to the governor for his decree as if the governor had said so in plain words. If, on the other hand, the construction given by the claimants to the order of December 31, 1845, be correct, then that order was, in effect, a delegation by the governor to the prefect of the power to say whether there should be a grant; and as the prefect delegated the matter to the justice of the peace, with direction to "grant them as much of the land as each can cultivate," the question of whether these petitioners should have a grant was finally a matter upon which the justice of the peace was the arbiter. It requires only a glance at the above-quoted regulations, however, to show that the governor had no power to delegate these functions either to the prefect or the justice of the peace. The regulations of 1828 make the governor—not the prefect nor the alcalde—the official who should "grant or not said application" after investigation. If this was an attempt by Armijo to leave to the officials named the question of whether possession should be given the petitioners, it was void as unjustified by any law. If, on the other hand, it was a direction to them to investigate the matter, to give the petitioners temporary possession, and to report to him for his further action, as provided by the

sections of the regulations above quoted, it does not appear that any further action was taken, and no rights such as should be considered "property" under the treaty of 1848 became vested. The authorities are abundant to the effect that a mere temporary or permissive possession confers no property rights which this Government is under obligation to respect. (*De Haro* v. *United States*, 5 Wall., 599; *Serrano* v. *United States*, 5 Wall., 451.)

The facts of the present case are not unlike those developed by the case of *Bergere* v. *United States* (168 U. S., 66), recently decided by this court on appeal from the Court of Private Land Claims.

While it is true that in that case explicit direction was given the alcalde to return the possession conferred to the governor for approval, that obligation existed in the case under discussion as a matter of law as fully as though Armijo had inserted in his decree of December 31, 1845, a specific direction to that effect. Indeed, as above argued, his delegation of the exercise of discretion being unauthorized, the "grant" of "as much land as each can cultivate," by the alcade was a nullity until returned to Armijo and approved by him.

III.

Assuming this indorsement to be a grant and to have been made under the colonization law of August 18, 1824, and the regulations of November 21, 1828, as contended for by claimants, and as held by the court, this is not such a claim as the Court of Private Land Claims had jurisdiction to confirm.

This grant was never approved by the departmental assembly as provided by section 5 of the regulations of 1828. It was thus not perfect at the date of the treaty, and the grantees had no right to demand such approval from the assembly, or, in other words, no right to demand that the grant be made perfect. The case made on the record is, as to this point, precisely the same as that of the Sierra Mosca claim (*Ortiz* v. *United States*, No. 20, this term), and reference is made to Point *Two* of that brief, where this proposition, as applied to that character of title, is fully discussed. The possession of the claimed premises shown by the present record is almost, if not quite as flimsy, as that shown by the Sierra Mosca record, and raises as little equity in behalf of claimants. In this case the only evidence of occupation prior to the treaty, outside of the glittering generality in which witness Quintana indulged before the surveyor-general (R., 42), when he said in response to the question as to who had possession of the land since 1846 that "the grantees possessed it until they sold it to Jose Gonzales," is the testimony of Antonio Laforet (R., 23), to the effect that in 1846 three of the grantees were occupying small strips of land, each about 100 varas or yards in width. Such a possession, under the *Peralta Case* (3 Wall., 434, 441), raises no substantial equity. There is nothing in the record to create the presumption that the departmental assembly would have been moved as a matter of grace, much less of right, to make this grant perfect by approving it.

IV.

This claim can not be confirmed for the reason that there is no archive evidence of the same and no record of the alleged grant in the archives derived from the former Government.

The necessity of archive evidence of a grant and of proof of record of the same under the former Government has been fully discussed under Point *Three* in the Government brief in the Ortiz or Sierra Mosca Case, No. 20, this term, and without quoting again from all the authorities there set forth, it seems sufficient simply to call the court's attention to a few of these and to invite its consideration of the others there cited.

There is a complete absence from this record of archive evidence of the grant sued on. This claim rests solely upon a document produced from private hands before the surveyor-general in 1872. This *quantum* of evidence under the California grant cases, decided by this court, is insufficient to justify a confirmation. Thus, in the *Bolton Case* (23 How., 347), it is held that the record required by section 9 of the regulations of 1828 (R., 142) is "the evidence of the grant," and that while the *titulo* given by the governor "serves among individuals the purpose of evidence," the Government when it institutes inquiries in reference to the subject is "entitled to require the production of that official record, which it has prescribed to its officer, for its own security and as a necessary condition of a legal administration and a necessary precaution against fraud."

The case of *Knight's Administrator* (1 Black, 228) is a leading one on this subject, the opinion of the court being in part as follows:

> But a more decisive answer to the claims remains to be stated, and that is *that there is no record evidence that the grant was ever issued, and without such evidence the claim can not be confirmed.* That rule is founded upon the Mexican law, and has been so repeatedly announced by this court that it seems unnecessary to adduce any argument in its support.

The *Neleigh Case* (1 Black, 298) reiterates the rule, as follows:

> A paper purporting to be a grant of land in California, first produced from the custody of a claimant after the war, and unsustained by any record evidence, will not be held valid by this court. * * * Evidence of the destruction of archives during the war does not avail the holder of such a naked grant, unless he can show *where* and *how the specific papers necessary to complete his title were lost or destroyed.* * * * The court again affirms the doctrine *that the testimony of Mexican officials can not be received to supply or contradict the public records.*

So in the *Romero Case* (1 Wall., 743) it is said:

> Suppose it be conceded, however, that the probative force of the parol testimony is not overcome by the contrary tendency of the written evidence, the concession could not benefit the claimants, *because the case is one where there is no record evidence of any kind* to prove either the existence or the authenticity of the grant. Assuming that state of the case, then it falls directly within the class of cases where the confirmation has been refused because there was no record evidence to support the claim. (Citing numerous cases.)

In the *Vallejo Case* (1 Black, 541) the court, referring to the regulations of 1828, says:

> It is sufficient to say that the system thus established by the sovereign power of the nation for the grant and distribution of the public lands exhibits a deliberation and care over the subject that is in striking contrast with the system of granting the public lands under our Government, and furnishes the highest evidence *of the extreme interest the Mexican Government* took in guarding against impositions and frauds by or upon the political chiefs in the execution of the law. * * * No record was made of the title. * * * It was well said in *The United States* v. *Sutter* (21 How., 175) that "in a very well regulated government the deeds of its officers conveying parts of the public domain are *registered or enrolled*, to furnish permanent evidence to its grantees of the origin of their title. * * * It is important also that a record should be made of those grants, so that the Government may be advised in respect to the portions of the public domain that have been sold or disposed of, and as a security against the frauds of the public officers upon whom the power of making the grants has been conferred. Grants of this description, when made in due and orderly form, are either made at the seat of the Government, where the public records are kept and a record can be readily made, or, if signed by the public officer residing at a different place, *are not deemed grants till the proper record is made.*"

The case of *Berreyesa* v. *United States*, decided by this court and found in 23 Lawyer Cooperative Edition, 913, goes still further and holds that a Mexican grant will be *rejected* where it does not appear that it "has been de-

posited and recorded in the proper public office among the public archives of the Republic."

Perhaps the latest case on the subject is that of *Peralta* (3 Wall., 434). In that case the documentary evidence was quite complete, much more so than in the case now under consideration, and yet the court holds:

> There was neither grant nor archive evidence. If there had been a grant according to law the *expediente* would have remained in the archives, but there is no trace of it there, and it is produced from *private hands, which tends strongly to show that the governor never saw it.*

Speaking of the California act, the decision of the court thereon and the policy of the Mexican nation, as to a permanent record of grants of its domain, the court says:

> Very many claims were tested by the rules and found to be valid and were confirmed; others were imperfect and could not be recognized. Then commenced a struggle, which has never been abandoned, to induce the courts to fritter away the act of Congress and *substitute parol proof for record evidence.* The history of the cases in this court from California show the extent of the struggle and the result. We have refused to allow oral testimony to prevail where archive evidence was necessary. * * * The Mexican nation attached a great deal of force to the disposition of its lands and required many things to be done before the proceedings could ripen into a grant. But the important fact to be noticed is, that a record was required to be kept of whatever was done. This record was a guard against fraud and imposition and enabled the Government to ascertain with accuracy what portion of the public

> lands had been alienated. *The record was the grant and without it the title was not divested.* The governor was required to give a document to the party interested, which was evidence of title and enabled him to get possession; but this "*título*" *did not divest the title unless record was made in conformity with law.* Written documentary evidence, *no matter how formal and complete or how well supported by the testimony of witnesses will not suffice if it is obtained from private hands, and there is nothing in the public records of the country to show that such evidence ever existed.*

The court goes on to say, in regard to the contention that the party in interest should not suffer where the archives have been lost or destroyed:

> This is true; and if the claimant can show to the satisfaction of the court *that the grant was made in conformity to law and recorded, and that the record of it has been lost or destroyed*, he will be permitted to introduce secondary evidence of it. *But the absence of record evidence is necessarily fatal*, unless that absence can be accounted for.

Under the authority just cited, which is last of a long line of cases, and is thus the mature and final judgment of this court upon a subject with which it has had to deal repeatedly, the record *was* the grant, and without it the title was not divested. No matter how formal and complete the documentary evidence, or how well supported by oral testimony, the title is insufficient if produced from private hands and there is nothing in the archives to corroborate it.

This statement of the law is conclusive of the present

case in that it has the radical defect of being founded upon a paper produced from private hands and without archive record or corroboration.

V.

The confirmation in this case is excessive, in that it is for the entire tract within the boundaries named by the alcalde instead of for only the irrigable or cultivable lands within said boundaries, and in that the east boundary is fixed at the summit of the mountain instead of at the foot.

An examination of the title papers presented (Appendix No. One) will show that the petition for this claim was presented by one Carlos Santistevan for himself and his five associates. In his petition he states that they are "without land as property *to cultivate*," and that they have seen a vacant tract "very suitable for cultivation, irrigable by certain water, which they call [the water] of the Lama at the place which is so called and even another place which they call Sebolla." He proceeds further to state that the said places are "between the settlement of the Rio Colorado and San Cristoval," but there are no boundaries given, and the only additional item of description is the statement that the land is of dimensions and possessed of water very adequate for cultivation and for sufficient support of the petitioners and their families. The petition is evidently only for the cultivable land or the land suited to the purpose of the petition, which is repeatedly stated to be "cultivation," the petition being "without prejudice to a third party, either with repect to property or *pasture* or in any other manner." The governor, on December 31, 1845, refers the matter to the

prefect of the district for an investigation and evidently for a report, upon which a decree might be framed by him under section 4 of the regulations of 1828. The governor was required to make such a decree, and this in turn was to be forwarded to the territorial deputation under section 5 of those regulations. It can hardly be contended that this order for an investigation by the prefect was the "grant" which the governor was required to send to the deputation or assembly. The regulations and the order itself evidently contemplate something more—a definite decree by the governor conveying the title so far as he was permitted to do so. This order of December 31, 1845, therefore amounted simply to a direction for an investigation and for a provisional possession to be given the petitioners; provisional possession of the land or possessions "to which the petitioner refers." But the petition does not name any boundaries for said lands and possessions, they being simply described, as above shown, to be lands "suitable for cultivation," in a given locality. Looking therefore to the further proceedings to ascertain just what was the extent of the possession conferred, we find that on January 3, 1846, the justice of the peace was directed by the prefect to "investigate whether the land the petitioners ask for is vacant and whether, from its donation, there would not result prejudice to a third party and, there being none of this, he will proceed to grant them *as much of the land as each of them can cultivate*, under the condition that they *must fence with a regular fence*, in order to prevent damages, and that they do not obstruct the *roads*, *pastures*, and *watering places*," etc.

It is evident that the only authority the justice of the peace had to act in this matter was derived from this order of his superior officer, the prefect, and his power was circumscribed by the limitations imposed by the prefect. So far as he went beyond that power his act was void. It will be noted, therefore, that the alcalde was empowered by the prefect to "grant" them or to give them possession of only "as much of the land [i. e., the land described in the petition] as each can cultivate;" land not 17,159 acres and more in area (plaintiff's petition, R., 2), but land such as they could fence; land not for pasturage as well as cultivation, but lands such that "the roads, pastures, and *watering places* are not to be obstructed thereby." Pasturage could certainly not have been reserved to the public and at the same time granted to the petitioner; and as it is evident that it was to be reserved, it is equally evident that it was not to be granted, and that all that was to be granted was "as much as each can cultivate," as much as each can fence "with a regular fence." It is inconceivable that in those primitive days, long before the era of barbed wire, and when the only fences were those laboriously constructed of wood, that the condition to inclose the tract with "a regular fence" would have been imposed had this been a tract of over 17,000 acres. On the other hand, had the cultivable land only been granted, it is very readily seen that this would harmonize with the fence requirement, which was "to prevent damage," evidently, to the crops; it could not have been to the pasture, for that was not to be obstructed. If the requirement was that a tract of more than 17,000 acres was to be fenced, the claim must

fail for the reason that there is no proof of the construction of the fence, and its nonconstruction was thus an unfulfilled condition, which is fatal to a confirmation under subsection 8 of section 13 of the act of March 3, 1891, making a performance of all conditions and requirements, antecedent or subsequent, a prerequisite to a confirmation. (See *Cessna* v. *United States*, 169 U. S., 165.) As a matter of fact, however, while the parties were required to fence their entire possession, that possession was only the cultivable land, and this they did fence. The extent of this is shown (R., 8 and 9) by the testimony of Ezra Redding, in part as follows:

Q. Who occupied this, if anybody, when you first knew it?

A. Felix Gonzales.

Q. Is he one of the parties from whom you purchased the property?

A. Yes.

Q. What interest did he claim to have in it?

A. Two-thirds, I believe.

* * * * *

Q. What was he doing?

A. Farming.

Q. Did he have his residence there?

A. Yes.

Q. How much of a house did he have?

A. He had an adobe of two rooms; he had a two-roomed log house, if I am not mistaken; they were together.

Q. What cultivated lands did he have there, if any—Felix Gonzales?

A. Several hundred yards square.

Q. Did you see any inclosure?

A. Yes.

Q. What were they?

A. Fences.

* * * * *

Q. When you first knew this property, Felix Gonzales was occupying it?

A. Yes.

Q. He was claiming a two-thirds interest in it?

A. I think he had that; I am not certain what he claimed.

Q. He claimed a large interest?

A. Yes.

Q. He was the only one living there at that time?

A. Yes.

Q. On this tract?

A. Yes.

Q. He was cultivating, you say, several hundreds square.

A. Yes; I think he was.

Q. How many acres, at the outside, do you suppose it was?

A. Well, it might have been 12 or 15 acres, may be 20; I do not know particularly.

Q. You do not think it was more than 12 or 15 acres?

A. No; there was other land he had not in that year.

Q. How much did he have inclosed?

A. Several hundred yards; I did not particularly notice it.

Q. All the land he had cultivated was in this inclosure?

A. Yes; I think so.

Q. That was the inclosure around his residence?

A. Yes.

Q. There was no other inclosure on the property that you know of?

A. No; not that I recollect.

The testimony of Antonio Laforet, the only witness examined in the court below as to the status of the property prior to 1846, also throws light on this subject.

Q. These three people you have mentioned, Carlos Santistevan, Julian Santistevan, and Jose Manuel Garcia, they were the only people that you saw on that land at the time you were there that you knew, were they?

A. Yes, sir.

Q. How much land did Julian Santistevan occupy?

A. I do not know.

Q. He was farming a small tract, was he?

A. Yes; there was a planting strip.

Q. Carlos Santistevan, he was cultivating a small strip, too, was he?

A. The planting portion of the farm was together.

Q. How many acres did they plant there?

A. I can not state.

Q. As much as 5 acres?

A. It is impossible to say. I do not know how much an acre is.

Q. How many varas were they planting?

A. It may be 100 varas.

Q. Not more than that?

A. Yes; the bottom was small.

Q. Manuel Garcia, how many acres was he cultivating?

A. He also has a strip; I do not know how much; very little, also.

It will thus be seen that the justice of the peace was limited in giving the possession by the amount each could cultivate, and this amount, as fixed by their possession prior to 1846, was only a few hundred varas, or yards, along the little rivulet called the Lama, a water source that is itself dry a large part of the year (R., 19).

That the justice recognized this limitation is shown by the act of possession dated March 20, 1846, wherein he says that he is acting under the decree of the prefect dated January 3, 1846, and wherein he further says that the petitioners rejoiced at being the lawful owners of "the land which they desired to irrigate with the water of the Rito de la Lama." In the same instrument he says "that the *pastures, roads, and watering places are left free* toward the east from where it may not be possible to irrigate, without right to prevent pasturing because of being possessors;" and they are also "obligated to fence with a regular fence so as not to have to claim damages." It is true that the alcalde delineates certain natural boundaries, which are now alleged to contain over 17,000 acres; but it is manifest that if his intention by so doing was to give the petitioners the whole of that area, his act was in excess of the power conferred upon him by the prefect, which, as above shown, was to give to the parties possession of only "as much of the land as each can cultivate." The proof clearly shows that the Lama is adequate for the cultivation of only a small portion of the area here claimed (R., 13, 14, 18, and 19); and it is a matter of common knowledge that in the arid regions of the West the only cultivable land is that which lies in the immediate valley of the water course, the land on the elevated portions of the valley, away from the water course, being suitable only for pasturage and the like. It is evident, however, that in the delineation of these boundaries the alcalde did not intend that the title to the entire area within such boundaries should pass to the petitioners. He expressly precludes such a theory

by the plain recitals of his act of possession, wherein he says that the pastures, roads, and watering places are to be left "free toward the east from where it may not be possible to irrigate." By being left free, it is evident that they were left public. But if they were free and public under the Mexican Government, they were free in 1846, when this territory was acquired from Mexico, and are free to-day. The Government is under no obligation to give claimants more than they could have gotten under the former government. Its duty ends when it recognizes title to the extent that the Mexican Government recognized it. But to confirm this entire tract is to give a patent for the entire tract; in other words, is to vest exclusive and absolute title to all the lands—pasture lands as well as irrigable or cultivable lands—in the claimants; when the prefect who ordered the possession says "the roads, pastures, and watering places are not to be obstructed," and when the alcalde who gave possession says that such "roads, pastures, and watering places toward the east from where it may not be possible to irrigate" shall be left "free." The proof in the record on the extent of the irrigable lands is not very full, for the reason that the court below (R., 19) limited the inquiry of the Government on this point as immaterial. It is respectfully submitted that this consideration is a most material one, and that if this claim be held, notwithstanding the other grounds he hereinbefore urged, to be entitled to confirmation, the cause should be remanded for further proof as to the extent of the irrigable lands, as distinguished from pasture lands in the Lama Valley,

and for a decree of confirmation only to the extent of such irrigable lands.

A kindred defect in the decree in this case is the fact that it carries the grant to the top of the mountain on the east. This is a matter of more than ordinary importance from the fact that the mountain range referred to is quite lofty and is in a section of New Mexico exceedingly rich in mineral. It is difficult to see upon what ground the court carried the confirmation to the top of the mountain. The title paper does not say "the top of the mountain," but simply "the mountain." There is nothing in the oral evidence to indicate that the top of the mountain has ever been claimed or considered as the boundary on the east, so that the holding of the court must have been simply on the bare proposition that where a boundary given is "*la sierra*" (the mountain) it means as a matter of law the top or summit of that mountain. To this proposition the Government can not yield its assent. The exact meaning of the word "mountain" as a boundary seems not to have been to any extent the subject of consideration by courts of last resort, and barring certain *dicta* in a California case, presently referred to, the only authorities on this subject the writer has been able to find are those contained in the Land Office reports of this Government in construing this language in private land claims. In the survey of the innumerable grants in California made under the Mexican Government the uniform interpretation given the word "mountain" as a boundary has been "the foot of the mountain." Such a construction was adhered to by the Land Depart-

ment of this Government throughout the whole treatment of the subject of Mexican grants in California, and the absence of adjudicated cases shows that it was as steadily acquiesced in by the claimants of those grants. This construction by the department intrusted with this peculiar duty of locating boundaries under Mexican and Spanish grants is, under the frequent decisions of this court, of persuasive weight, and when the acceptance of this construction by the Mexican grantees and those who were claiming under them—all of whom were presumably acquainted with the boundaries of their own tracts—is considered, such construction so acquiesced in becomes of great weight. The first case of this character (decided December 17, 1873) is found at page 589 of Copp's Public Land Laws, in connection with the survey of the Rancho Caslamayomi, where the following is found:

> Where the final decree of confirmation under the act of March 3, 1851, confirmed the title to a tract of land containing "8 square leagues of land, a little more or less, as shown by the map or diseño in the expediente, and in the boundaries described in the titulo," and the diseño shows a larger tract of land than any other part of the expediente: *Held*, that this was a confirmation according to the boundaries laid down in the titulo. *Held*, also, that where the western boundary of a grant was "mountains covered with red woods," the foot of such mountains on the east was meant.

This decision of the Commissioner of the General Land Office was affirmed July 13, 1874, by the Acting Secretary of the Interior. The ruling was reaffirmed on

September 18, 1874, in the Rancho Los Prietos y Najalayegua (Id., 590–599) in the following language:

> Where one of the calls for boundary of a grant is a mountain represented on a diseño, the foot of such mountain is the true boundary.

Not only was this construction given to all private land claims in California, but also to all in New Mexico, surveyed under the act of July 22, 1854. It is believed that not a single one of the Spanish and Mexican grants presented under the act of 1854 in that Territory and surveyed under direction of the General Land Office has ever been carried to the top of the mountain where there is a call for a "mountain" as a boundary. The question of adhering or not to the rule adopted in the California grants was considered by the Land Department in the case of the Ramon Vigil grant in New Mexico, confirmed by act of Congress, approved June 21, 1860 (12 Stat., 71). We quote as follows from the opinion bearing date April 10, 1883 (Decisions of the Department of the Interior relating to Public Lands, Vol. 1, pp. 288–290):

> The western boundary is described in the petition of Sanchez (the only description found in the original title papers) and in the petition of Ramon Vigil to the surveyor-general as the Rocky Mountains. In the report of the deputy surveyors who made the survey, and in the protest of Mr. Hayes, the mountain range made the western boundary of the surveyed tract is called the Sierra Madre. No other mountains are alluded to by either, and from the description of the northern boundary line in the field notes and of the surveyed tract in the deputy

surveyors' report it appears that this is the first mountain range west of the Rio Grande answering the descriptive call.

The survey makes the foot or base of the range the boundary on the west. The protest and objection of Mr. Hayes is limited to this part of the survey, the ground of complaint being that the line is run at the foot instead of the summit, or ridge, "thereby," as alleged, "attempting to materially reduce the quantity of land in fact granted."

The only question, therefore, remaining to be considered is as to whether the base or the summit of the mountains should constitute the boundary. The protestant contends that "it always was and is yet the custom and understanding in Mexico (and consequently in New Mexico) that a mountain boundary embraced to the summit unless otherwise specifically expressed."

I do not so understand the rule. Where an object boundary of extent is named, it stands to reason that the side of the object nearest the tract to be bounded, unless some other part be particularly designated, should be taken as the boundary; and upon this principle it has always been held in this Department, in locating Mexican grants in California, that where a mountain has been made the boundary, without more specific designation, the proximate foot or base is to determine the boundary line.

The rule was so held by this office December 17, 1873, in the case of Rancho Caslamayomi, affirmed by the Department on appeal August 13, 1874. (1 C. L. L., 589.)

The same was held by this office in the case of the Rancho Los Prietos y Najalayegua, decided September 18, 1874, where one of the calls was a mountain represented on a diseño. (Id., 591.)

In the matter of the survey of the Rancho Agua Caliente, Vallejo confirmed for part and Leavenworth for another part. The description in the case of Vallejo was "the hills and mountain which intervene and separate the rancho of George Yout;" and in the Leavenworth case "the mountain dividing Sonoma from Napa." This office decided, February 21, 1878, in the case of Vallejo, that "the boundary must follow along the foot or base of such hills or mountains," and that of Leavenworth that "the foot of the mountain should constitute the boundary."

In a subsequent review of the latter case, April 24, 1878, this office, in reply to an application of Hon. Henry S. Foote, asking for certain modifications of the decision, and as to the mountain boundary claiming that there was a well-defined range of hills or mountains between Sonoma and Napa, and that the summit or ridge thereof should be adopted as the boundary, made the following statement of the rule:

"The rule is well settled in regard to cases like this, that where hills, mountains, or mountain ranges are named as boundaries, the foot or base is to be taken as the boundary indicated, unless the top ridge or summit is clearly indicated as such."

Appeal was taken to the Department in the case, both of Vallejo and Leavenworth, but withdrawn as to that of Leavenworth; but as both cases were embraced in the same decision, both were before the Department; and by its decision of January 9, 1879, the decision of this office as to the mountain boundary in the case of Vallejo was affirmed, and in that of Leavenworth expressly approved.

If I entertain doubt as to the proper location of the boundary under consideration, as matter of construction having reference to the descriptive call, which I do not, the decisions cited above abundantly

> settle the question. In accordance with them the boundary must be held to be properly located, and the survey is hereby approved.

This repeated interpretation of a term of description, announced in 1873, reaffirmed in 1874, followed in 1878, approved in 1879, and again approved in 1883, is entitled to great respect. When it is reflected that the consideration of this matter extended over a period of ten years, under three different administrations, and was in connection with precisely the same subject-matter as is here involved, it is entitled to still greater respect. As was said in *United States* v. *Alabama Railroad Company* (142 U. S., 621):

> We think the contemporaneous construction thus given by the executive department of the Government and continued for nine years through six different administrations of that department—a construction which, though inconsistent with the literalism of the act, certainly consorts with the equities of the case—should be considered as decisive in this suit.

To a grant document of this description the familiar doctrine announced in *Leavenworth, etc., R. R. Company* v. *United States* (92 U. S., 740), as to Congressional grants, is also applicable, where it is said:

> All grants of this description are strictly construed against the grantee; nothing passes but what is conveyed in clear and explicit language. * * * If these terms are plain and unambiguous, there can be no difficulty in interpreting them; but if they admit of different meanings—one of extension and the other of limitation—they must be accepted in a sense favorable to the grantor.

It is true that in the case of *Ornbaum* v. *His creditors* (61 Calif., 459) the supreme court of that State says in the course of its opinion:

> The boundary usually goes to the middle of the natural object named except in the case of a range of mountains, when it goes to the comb or dividing line of the ridge.

An examination of that opinion will show that this statement, unsupported by a single citation of authority, is the purest *dictum*. That case, it will be noted, is one involving the right to a homestead, and the only way in which the discussion of the matter of a mountain got into the record at all was because the piece of land claimed as a homestead was described as bounded on the south by the Redwood Mountains, and it was contended that it was not thereby particularly or definitely described. It is manifest that a decision as to whether or not such a description is sufficiently definite is a very different matter from deciding as to whether such a call means the top or the foot of the mountain. The latter proposition was not involved in the case and its decision was not necessary to a determination of the case. It was not discussed by counsel, and in the head note of the case, which presumably contains a statement of what the case decides, it will be noted that there nowhere appears the proposition that "a mountain" in a description of land boundaries means "the top of the mountain." The head note does contain a statement of the proposition that "a mountain or range of mountains is a definite boundary of land," and that is all that was involved in the case on this point, and is all that was material to a determina-

tion of the case on this point. It is further true that the court below, in one of the early cases decided by it, followed this *dictum* in the California case and held that the term "mountain" meant "the top of the mountain." That decision, however, was, it is respectfully submitted, based upon a misapprehension of the force of this California case and upon an oversight of the decisions above cited *contra*. There is this further distinction, that in that case there was abundant oral proof showing use and occupation to the top of the mountains, and thus a practical construction of the title by the parties at interest, whereas here there is an entire failure of such proof.

It is respectfully submitted that the claim here presented should be remanded to the court below, with directions to reject the claim and to dismiss the petition, or, in the event that the same be held entitled to confirmation, the decree should be modified in accordance with the contentions last above urged.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

WILLIAM H. POPE,
Special Assistant to the Attorney-General.

APPENDIX No. ONE.

His excellency the governor of this department of New Mexico, Don MANUEL ARMIJO:

I, Carlos Santiestevan, for myself and in the name of five other associates, all residents of the town of Los Dolores, in the the district of Taos, before your excellency in due form and as may be best allowed by law, represent and state: That, finding ourselves without land as property to cultivate for the support of our persons and needy families, and having seen a vacant tract of land very suitable for its cultivation, irrigable by certain waters which they call [the water] of the Lama, quite sufficient for its irrigation, at the place which is so-called and even another place which they call the Sebolla, and which are between the settlement of the Rio Colorado and San Cristoval, pertaining to said demarcation of Dolores de Taos, I ask and pray of the well known and accredited liberality of your excellency that, in the name of the high powers of our Republic of Mexico, you be pleased to make us a donation of said land, for it is of very adequate dimensions and water to enable it to be cultivated, and for sufficient support of the petitioners and their families, and without prejudice to a third party, either with respect to property or pasturage or in any other manner, but will rather result in very much benefit and increase of population and agriculture, and, besides relieving the necessity of the petitioners, it will also

strengthen that place or frontier which is guarded by said settlement of the Rio Colorado, from which said place it will be distant only about a league and from the settlement of San Cristoval somewhat more.

Therefore I earnestly pray your excellency to be pleased to accede to this, our petition. I declare and protest, etc.

City of Santa Fe, December 31, 1845.

At the disposition of your excellency.

CARLOS SANTIESTEVAN.

[On the margin.]

SANTA FE, *December 31, 1845.*

To the prefect of the district to ascertain if the land asked for has no owner and to cause the corresponding justice to give the possessions the petitioner refers to.

ARMIJO. [Rubric.]

JUAN BAUTISTA VIGIL Y ALARID, [Rubric.]
Secretary.

RIO ARRIBA, *January 3, 1846.*

The justice of the peace, to whom it corresponds, will investigate whether the land the petitioners ask for is vacant, and whether from its donation there should not result prejudice to a third party; and, there being none of this, he will proceed to grant them as much of the land as each of them can cultivate, under the condition that they must fence, in order to prevent damages, and that they do not obstruct the roads, pastures, and watering places, and with notice that they must keep sufficient arms for their defense.

D. LUCERO. [Rubric.]

In this third demarcation of Dolores of the district of Taos, on the 20th day of the month of March, one thousand eight hundred and forty-six, I, the justice of the peace, by virtue of law, citizen Juan Lorenzo Martinez, in said demarcation, in compliance with a decree of January 3, one thousand eight hundred and forty-six, decreed by the prefect of the second district of the north, Don Diego Lucero, to me as the justice to whom it corresponds to investigate whether the land which is asked for by the five petitioners is vacant, and, having no hindrance, I proceeded to the land, which is uncultivated and wild, and took them by the hand and leading them very slowly, and, in full right of having competent authority, I placed them in possession, in the name of God and of the high authority of our wise Mexican laws which have sufficient authority to guarantee vacant lands, that idleness may be banished and agriculture increased, as they petition, to cultivate it, inasmuch as they find themselves without land as property, and in virtue of which, at the same instant they received their granted donation, they shouted with joy, crying, Long live the renowned sovereignty of the Mexican Nation; who, protected in such manner, in jubilation thereat plucked grass, threw stones, and being lawful owners of the land they desire to irrigate with the water of the Rito de la Lama, since, relying upon that small water source, they had asked for the donation, I therefore designate to them as boundaries, on the north the boundaries of the possession of Rio Colorado, and on the south, until it reaches the boundary line of San Cristoval, and on the east, the mountain, and on the west the edge of the bluff (peñasco) of the Rio del Norte, leaving the pastures, roads, and watering places free toward the east, from where it may not be possible to irrigate without right to prevent pasturing because of being possessors; and they are also obligated to fence with a regular fence, so as not to have to claim

damages, having to keep sufficient arms for their defense; and in testimony of this donation, for all time, I authenticate it, under the authority conferred upon me, with my attending witnesses, in default of a notary public, there being none in this department, and it is done on this present common paper because there is none of the proper stamp, the new colonists obligating themselves to supply that of the proper stamp whenever they can opportunely find it; to all of which I certify.

J. LORENZO MARTINEZ. [Rubric.]

Attending witness:

JUAN JOSE CORDOVA. [Rubric.]

Attending witness:

JOSE CONCEPCION MEDINA. [Rubric.]

NOTE.—Those placed in possession in their own names and surnames are those who follow in this list of names, that they may, for the sake of good tranquillity and neighborhood, proportionately divide among themselves the land which I delivered to them without surveying it, because of the very inclement day and the great amount of undergrowth that impeded the cord, and they are in this [list]:

JUAN CARLOS SANTISTEVAN.
JOSE MANUEL GARCIA.
JULIAN SANTISTEVAN.
CARLOS ORTIBIS.
TOMAS ORTIBIS.
Valid. [Rubric.]

Attending witness:

JUAN JOSE CORDOVA. [Rubric.]

Attending witness:

JOSE CONCEPCION MEDINA. [Rubric.]

Tomas Ortivis, being one of those put in possession in this possession, at the foot of which this note is placed,

transfers it to his brother, Carlos Ortivis, his rights in the possession, and signed it before me, Lorenzo Martin, alcalde, and the said Tomas signed it with me to-day, April 7, 1850.

LORENZO MARTIN. [Rubric.]
Alcalde.
TOMAS ORTIVIS. [A cross.]

Attending witness:
RAFAEL SISNEROS. [Rubric.]
Attending witness:
MATEO ROMERO. [A cross.]

Carlos Ortivis, being one of those put in possession in in this possession, at the foot of which this note is placed, transfers it to citizen Jose Gonzales, his rights in the possession, and he signed it before two witnesses who were present; and he transfers his rights for the amount of three dry cows, one cow and calf, and a yoke of oxen; which he signed with two witnesses to-day.

CARLOS ORTIVIS. [Cross.]

Attending witness:
JOSE MIGUEL PACHECO. [Rubric.]
Attending witness:
JOSE BITOR VALDEZ. [Cross.]

No. 35.

Sup. Ct. Off. of Atty. Gen. Attorneys

Reynolds Page for Appt.

Office Supreme Court U. S.
FILED
OCT 11 1899
JAMES H. MCKENNEY,
Clerk

Filed Oct. 11, 1899.

In the Supreme Court of the United States,

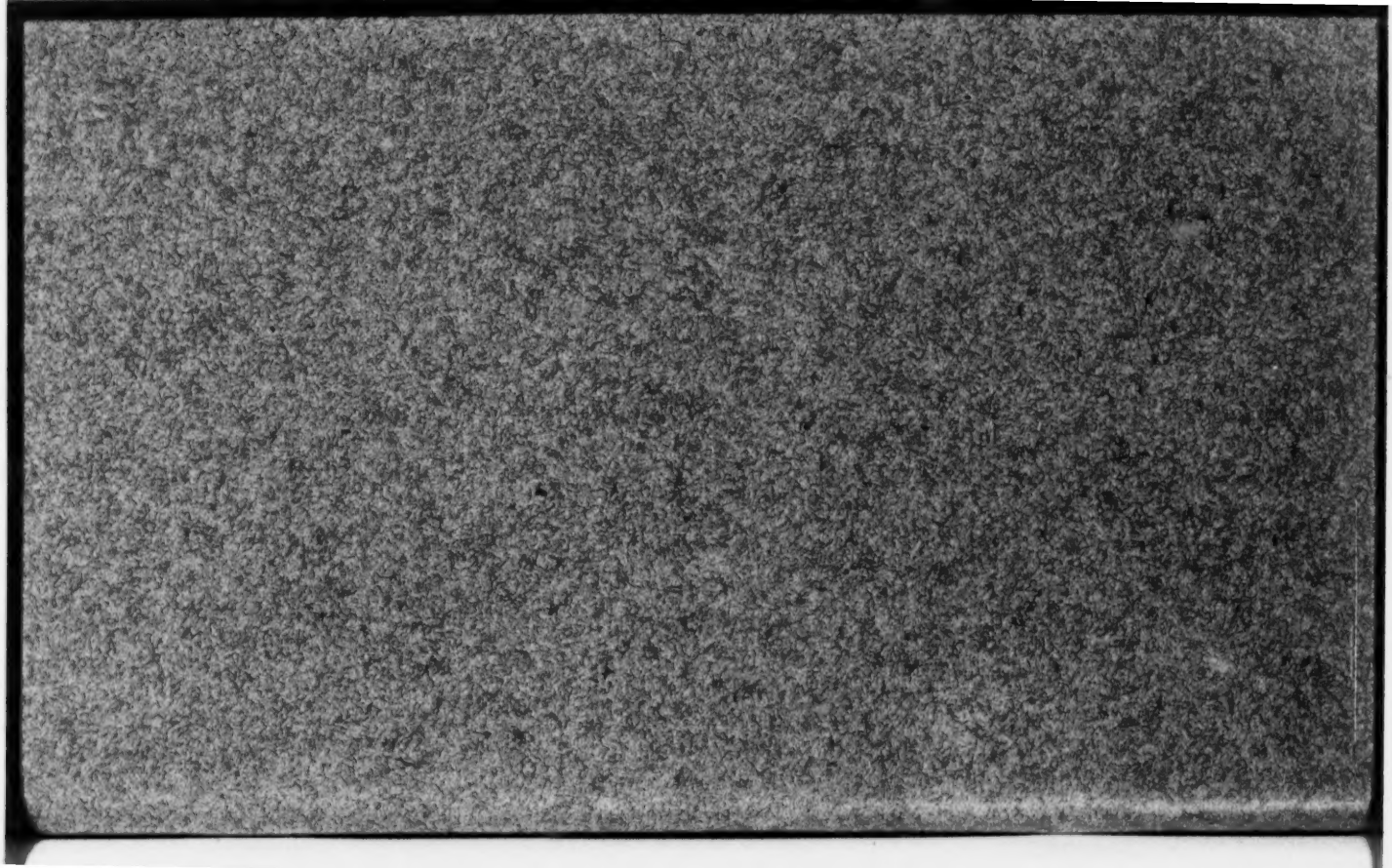
OCTOBER TERM, 1899.

THE UNITED STATES, APPELLANT,
v.
CLARENCE P. ELDER ET AL. } No. 35.

CEBOLLA GRANT IN NEW MEXICO.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

SUPPLEMENTAL BRIEF ON BEHALF OF THE UNITED STATES.



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SUPPLEMENTAL BRIEF ON BEHALF OF THE UNITED STATES.

Under the colonization laws of the Republic of Mexico in force at the date of this alleged grant, the governor of the department of New Mexico had no power or authority to make a grant of the vacant public lands of the nation or to initiate proceedings for that purpose, and the alleged grant is void for lack of power in the granting officer.

Whatever may have been the powers of the political chiefs of the territories under the regulations promulgated by the President of the Republic on November 21,

1828 (*Hayes* v. *United States*, 170 U. S., 637, 644), it would seem that the manifest effect of the legislation applicable to the vacant lands of the Republic, subsequent to the adoption of the constitution of 1836, not only deprived all territorial or departmental officials of power to dispose of the vacant public lands, but the policy of the Government and the laws passed in relation to colonization and the appropriation of the vacant public lands for the security and payment of the debts of the nation were all repugnant to any gratuitous colonization such as was attempted to be exercised by the former political chiefs under the law of August 18, 1824, and the regulations of 1828.

It is admitted at the outset that in the departments of the Californias and New Mexico governors very often assumed to grant the vacant public lands without apparently conforming to the law of August 18, 1824, and the regulations of 1828, and apparently ignoring the existence of the constitution of 1836 and the defined powers and duties of the governors of the departments under said constitution and laws passed in conformity therewith. In fact, they seem to have ignored the Territorial councils and afterwards the departmental assemblies, whereas, under the regulations of 1828, before any act of the governor passed a definitively valid right it was necessary to receive the concurrence of the Territorial deputation or of the Supreme Government.

The test to be applied under the act creating the Court of Private Land Claims had been repeatedly announced, affirmed, and reaffirmed by this court, and at the outset

Mr. Chief Justice Fuller, in the case of *Faxon* v. *United States* (171 U. S., 244–249), said:

> In order to the confirmation of any claim, the Court of Private Land Claims, under the act creating that tribunal (26 Stat., 854, c. 539), must be satisfied not merely of the regularity in form of the proceedings, but that the official body or person assuming to make the grant was vested with authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified; and the same rule applies to this court on appeal. (*Hayes* v. *United States*, 170 U. S., 637; *Ely's Administrator* v. *United States*, *ante*, 220.)

It is not possible to sustain this grant under the law of 1824 and the regulations of 1828, or under the laws in relation to the vacant public lands under the constitution of 1836, for it does not conform to the proceedings provided in any of them; nor was the officer who purports to have made the grant, to wit, the governor of the department, ever vested with authority to dispose of the vacant public lands; nor is it shown in any way that there was ever an attempt in any way to ratify such unwarranted exercise of power; nor is it a case where the grant can be treated as validated by presumption, for if it were permissible under the act of 1891 to presume the validation of the exercise of unwarrated and unlawful authority, yet there is no testimony, nor is there any condition surrounding this claim to warrant the application of such a presumption.

Subsequent to 1829 the financial distress of the Mexican Republic had become so alarming that it was imperative that all the sources of revenue should be placed

within as safe and economical control as possible. This was attempted by a series of laws and treasury regulations which have been set forth and referred to in a number of cases before this court, notably, *Ainsa* v. *United States* (161 U. S., 209); *United States* v. *Coe* (170 U. S., 681, S. C., 174 U. S., 578); *Hayes* v. *United States* (*ibid.*, 637), and the case of *Faxon* v. *United States* (171 U. S., 244).

The laws in relation to revenue promulgated in 1831, just referred to, indicate the tendency of the legislation of the country to place all the property of the nation which could be properly applied to the production of revenue under the immediate control of the general department of revenues. It might well be contended that the laws and regulations of 1831 embraced within their scope and intent the vacant public lands situated in the territories of the Republic. They were certainly the property of the nation and could be subjected to the control of the revenue department for the purpose of producing income to assist in meeting the financial distress of the nation. It was provided that the proceeds from the national property should be collected by the commissariats under the immediate direction of the general department of revenues. If the effect of this legislation was to carry the vacant public lands within the territories under the control of the department of revenues, then it follows, of necessity, that the power and authority of the political chiefs and the territorial departments under the regulations of November 21, 1828, were by implication repealed and annulled, as their exercise was inconsistent with the revenue laws of 1831. (Reynolds, pp. 151 to 161.)

But whether or not such was the necessary effect of this policy, it is certain that the legislation of the country after the adoption of the constitution of 1836 and the passage of the law of April 4, 1837, was certainly to modify materially the existing colonization laws, if not to repeal them. (*United States* v. *Coe*, 170 U. S., 681, 696.) This law formed the basis for all subsequent laws upon colonization, and it is earnestly insisted on behalf of the Government that it was intended as a specific repeal of the former laws upon colonization (Reynolds, 222), except such provisions of the former as were specifically saved by the same.

It will be noted that article 11 of the law of April 6, 1830, which was reserved in force, had relation to the colonization of foreigners in the frontier States and Territories, and said article had reference to article 7 of the law of August 18, 1824, in relation to colonization of foreigners of adjacent countries in those States and Territories of the federation which adjoin their nation. It would seem from the law of April 4, and the reservation of the former prohibitions as to colonization of foreigners, that it is not reasonable to suppose that the gratuitous colonization laws and regulations could possibly have remained in force. It was said in the case of *Faxon* v. *United States* (171 U. S., 244, 254) that—

> In 1835 the State legislatures were abolished and departmental bodies established; and the bases for a new constitution were adopted, followed by such constitution dividing the country into departments, the interior government of which was intrusted to the governors in subordination to the General Government. (Mex. Laws, 75, 89, 230, 258.)

The division of the Republic, as indicated before, was accomplished by the abrogation of the office of political chief and the appointment of governors. As to the abolishment of the Territorial deputations and the appointment of departmental boards, subsequently departmental councils, the constitutional provisions and the laws passed in pursuance thereof were numerous and minute in detail, but nothing can be plainer than the fact that the colonization of the lands which are or should be the property of the Republic by sales, leases, or mortgages, as provided by the decree of April 4, 1837, was a declared purpose and direction that they should be taken out of the category of lands that could be gratuitously colonized. The vacant public lands in all the departments from this time on were continually dealt with by legislation by way of mortgages and sales.

Just prior to the enactment of the law of April 4, 1837, to wit, on January 17, 1837, all the real property of the nation that existed in all the Territories of the Republic were adjudicated to the national bank for the redemption of copper coin. (Reynolds, 210, cited *United States* v. *Coe*, 170 U. S., 691.) This was followed by the law of March 20, 1837 (Reynolds, 211), wherein the powers and duties of the governors and the departmental councils were minutely defined. In article 59, section 3 (Reynolds, 220), it is provided: "They can not exercise other powers than those which this law designates for them, the violation of this part of the article and the two preceding ones being a matter involving the strictest responsibility."

The general constitution of December 29, 1836 (Reynolds, 203, 208), also undertook to minutely define the powers and duties of the governors and the departmental councils, and contains the same restrictions, and in none of these, neither in the constitution nor in the law of March 20, 1837, are governors empowered to gratuitously grant the public lands for any purpose.

On April 12, 1837, a national consolidated fund was created to secure the payment of the principal and interest of the public debt, by which the Government especially mortgaged 100,000,000 acres of the public lands in the departments of the Californias, Chihuahua, New Mexico, Sonora, and Texas as a special guaranty fund until the extinction of the credits. It is also provided that if any of these mortgaged lands should be sold, they should be sold at the rate of not less than 4 acres to the pound sterling, and the proceeds thereof should be paid by the purchaser to the agent of the Government in London, who should apply the same to the payment of the bonds of said fund, and that the bonds were to be received in payment for said lands at the current market price of the same. (Reynolds, 223, cited Coe Case, *supra*, 691.)

On April 17, 1837, pursuant to the law of April 4, 1837, minute rules and regulations were provided for the collection and disbursement of the revenues of the Government. This law has been repeatedly under consideration by this court in the various cases cited *supra*, and it may be said to form the rules and regulations for the sales, leases, and mortgages of the vacant public lands, as

well as all other property of the nation. The chief officer of this department was called the superior chief of the treasury. (Reynolds, p. 224.)

On September 15, 1837, a convention between the English bondholders and the Mexican Government was entered into. Article 4 thereof provides that the deferred bonds should be received at any time in payment of the lands that may be found unoccupied in the departments of Texas, Chihuahua, New Mexico, Sonora, and the Californias at the option of the purchaser at the rate of 4 acres per pound sterling. This law repeats article 7 of the law of April 12, 1837, creating the national consolidated fund, adding the following (Reynolds, p. 229):

ARTICLE 7. * * * The Mexican Government, besides the general mortgage contained in this article, expressly reserves by a public decree twenty-five million acres of the lands of the Government in the departments of closest communication with the Atlantic, and which appear most suitable for colonization from the outside. Said lands shall be specially and exclusively set aside for the deferred bonds, in case it is desired to exchange them for lands; and if the Government sell them, the proceeds therefrom shall be devoted to the redemption of said bonds.

By law of December 7, 1837 (Reynolds, p. 230), it was made the duty of the governors to "preside over the boards of sale and of the treasury, with power to defer the resolutions of these latter, until in the first or second session thereafter the matter under consideration is more thoroughly examined into." (*Foxon* v. *United States*, 171 U. S., 255.)

On June 1, 1839, the convention of Mexican bondholders entered into on September 15, 1837, was approved. Article 3 provided:

> 3. With respect to the colonies that may be established by virtue of the convention, the Government shall see that the existing laws on colonization, or those that may be enacted hereafter, are observed in so far as they are not contrary to the convention itself.

This law, in addition to approving the convention, provided that a bureau of colonization under the immediate orders of the supreme Government should be created as soon as possible. The regulations pursuant to the same were not adopted until 1846, when the bureau of colonization was provided by decree of November 27, 1846. (Reynolds, 261.) Regulations were promulgated and circulars issued to carry the same into effect on December 4, 1846. (Reynolds, 263, 281.)

From April, 1837, to October, 1841, the Government of Mexico was under the administration of General Bustamente as President, but upon the latter date he was driven from the capital and Santa Anna was placed in control of the Government under what were known as the bases of Tacubaya. (Reynolds, 234.) It is believed by counsel for the Government that these bases constituted a provisional constitution for the formation of the Government under President Santa Anna, retaining, however, the constitution of 1836 in force, except wherein modified by said bases or where inconsistent therewith.

It will appear by subsequent legislation that the laws on colonization just referred to were not changed by the

new government, but recognized as in force. By law of December 16, 1841, the superior chief of the treasury, created under the law of April 17, 1837, was abolished, and his duties devolved upon the departmental treasuries. (Reynolds, 238.)

On June 13, 1843, bases for political organization of the Republic were adopted (Compiled Laws, Vol. IV, p. 429; Reynolds, 243), departmental councils were abolished, and the departmental assemblies created. This decree defines the powers and duties of the departmental assemblies, among which may be found (article 134, section 5):

> To decree what is convenient and in harmony with the laws with respect to the acquisition, alienation, and exchange of the property (*bienes*) that may belong to the community of the department. As to the alienation of lands (*terrenos*), the existing laws and what the colonization laws provide shall be observed. (Reynolds, 244.)

Governors are provided for and their powers and duties defined, and an examination does not disclose any power or authority upon the governor of the department to dispose of vacant public lands at his pleasure.

By law of December 9, 1843 (Vol. IV, Mexican Laws, 666; Reynolds, 250), the value of public lands not on the frontier and not affected by any other obligation is applied to the payment of the credits caused by the redemption of copper coin.

On December 29, 1843, article 1 is construed to mean that it mortgages for the payment of the credits caused by the redemption of copper coin only a portion of the

public lands equivalent in value to said debt. (Vol. IV, Mexican Laws, 722; Reynolds, 251.)

August 4, 1846, the Plan of the Citadel was promulgated, which marked the end of the first epoch of the central system of government of Mexico (Reynolds, 253); on August 22, 1846, the constitution of October 4, 1824, was provisionally reestablished (Reynolds, 256); on September 17, 1846, the revenues were classified (Reynolds, 257), and on November 27, 1846, a bureau of colonization was established pursuant to the law of June 1, 1839, which ratified the convention with the bondholders dated September 15, 1837 (Reynolds, 261). The organization of this bureau of colonization was, as above pointed out, followed by regulations dated December 4, 1846. (Reynolds, 263.) It seems impossible that the legislation above referred to, from 1837 to 1846, could have been in force in the various departments of the Republic and recognized as the law of the land, and yet the governors of the departments of New Mexico and the Californias have been empowered to continually dispose of the vacant public lands without limit or restrictions, conforming to no law, and without any known authority. It is clear that they did not conform to the law of August 18, 1824, and the regulations of 1828, but seemed to exercise the right of disposing regardless of any law or limitations that may have been imposed upon that exercise of power.

The object and purpose of this summary is to show that the vacant lands in the various departments were appropriated by law to purposes other than gratuitous colonization, and the officials and official bodies that

might from time to time dispose of them or regulate the same were named and their duties defined, and in none of this legislation are the governors of the departments or departmental councils, boards, or assemblies authorized to gratuitously grant the vacant public lands separately or concurrently. We have shown, as we think, an appropriation of the vacant lands in the Republic to the revenues of the country and the machinery for carrying the same into execution; and have shown the existence of the law of April 4, 1837, repealing the laws on colonization. Although Armijo, from 1842 down to 1846, sought at various times to dispose of vacant public lands in the department gratuitously and without restriction—a practice in which alcaldes, prefects, town councils, departmental assemblies, and other officials likewise indulged (see supplemental brief and abstract of archive in case of *Chaves* v. *United States*, No. 14, on docket of present term)—yet it appears by the above-cited law that he and they did so without authority. The only ground upon which the grant can be sustained is upon a presumption which is not applicable to the laws of the country or facts in the case. The cases which have been much relied upon as to the exercise of the granting power by royal governors and intendants-general have no application to the performance of any act by one who, as a public official, and not as a private agent of the King, can dispose of public lands only by virtue of a law authorizing him so to do. In the case of *Strother* v. *Lucas* (12 Pet., 410), so often quoted on the subject of presumption, the ground upon which that case really turned was not

so much the secret instructions given the intendant-general, but that he, being possessed of vice-regal authority, could make the law himself and answer alone to his superior, the King; he was the *alter ego* of the King, possessing general power and authority, and no one was authorized to inquire into the exercise thereof except his principal. This has no application in the powers and duties of public officials under laws limiting the same. (*United States* v. *Coe*, 170 U. S., 697; citing Cambuston's Case, 20 How., 59.)

It is insisted that the governor of the department of New Mexico was without lawful authority to make a grant of the public domain subsequent to the adoption of the constitution of 1836; hence the so-called grant of December 31, 1845, should be rejected as having been made without lawful authority.

Respectfully submitted.

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Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

WILLIAM H. POPE,
Special Assistant to the Attorney-General.

In The Supreme Court of the United States,

OCTOBER TERM, 1899.

No. 35.

The United States, Appellant.

vs.

Clarence P. Elder et al.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

This is a case for the confirmation of a Mexican grant situate in the County of Taos, known as the Cebolla grant. It is based upon a grant made by Governor Armijo, on December 31, 1845, to five grantees, one Carlos Santistevan, Jose Manuel Garcia, Julian Santistevan, Carlos Ortivas and Tomas Ortivas, described and bounded as follows: On the north by the limits of the Rio Colorado grant; on the south by the dividing line of the San Cristoval; on the east by the mountains; on the west by the edge of the bluff of the Rio del Norte, leaving the pasturage, roads and watering places free from the grant eastwardly from the place where they cannot irrigate.

The grant has been surveyed by the government as a preliminary survey, and it contained a little over 17,000 acres. The Court of Private Land Claims made a decree confirming the same, and fixed the boundaries so that that area will be very much reduced, probably cut down more than one-half. The United States attorney answered the petition for confirmation by alleging that he had no knowledge of the facts set out in the petition, and for aught he knew they might all be true, and simply asked proof of all

the allegations made. The original grant papers were produced from the Surveyor General's office, and were introduced in evidence *without any objection.* The grant had previously been presented to the Surveyor General on petition of the claimants thereof in 1872 for his decision and approval thereof and recommendation for confirmation. On an investigation thereof he found the same a good and valid grant, and recommended it for confirmation to Congress. The decree to that effect was introduced in evidence without objection.

The original grant, as introduced in evidence, will be found on pages 33, 34 and 35 of the record. The translation thereof on pages 36, 37 and 38. The decision of the Surveyor general on page 42, 43 and 44. The testimony taken before the Surveyor General of two witnesses, Augustin Duran and Juan Quintana, who were shown to have been dead, will be found on page 41, and the petition to the Surveyor General for his action thereon on pages 38, 39 and 40.

The evidence introduced in this case shows the grant was produced from the custody of the Surveyor General, and the evidence also shows that the parties were placed in possession of the land by Juan Lorenzo Martines, a justice of the peace of the precinct of Dolores in the district of Taos, on the 20th day of March, 1846.

The petition for the grant was made by Carlos Santistevan to the Governor, who stated that he asked for it for himself and in the name of five other associates, all residents of the town of Dolores, in the district of Taos. That they were without land in fee to cultivate for the support of themselves and their families, and that they had found this tract suitable for cultivation, irrigable from certain water said to be from the Lama, quite sufficient for its irrigation, and they requested that he should make to them a grant (donacion) of the said tract, because the same was of convenient size and had ample water to be cultivated and to afford sufficient support for the petitioners and their families, and would not injure any third party with respect to property or pasturage, or in any other way. The Governor (Armijo), on the 31st day of December, 1845, ac-

ceded to the petition and referred the same to the prefect of the district, that he might ascertain whether the land applied for had an owner, and that he should cause the corresponding justice to deliver the land referred to by the petitioner. This is signed by the Governor and by the secretary, Juan Bautista Vigil y Alarid. The appellant's attorney objects that this decree is not properly translated in the record, and furnishes another translation. Appellee insists that the translation in the record is much nearer correct than that proposed by the appellant. Probably a better translation than either would be made by inserting what is evidently intended and understood, as preceding the first word in the grant, the words "acceded to and referred," so that it will read, "Santa Fe, December 31, 1845. Acceded to and referred to the prefect of the district, in order that he ascertain if the land which is solicited has no owner. That he may cause the justice to whom it corresponds to give the possessions (meaning land), which the petitioner describes." The prefect referred it to the corresponding justice with instructions for him to ascertain if the land which was solicited was vacant, and whether there would be damage to any third party resulting from granting the same, and if none did result, he should proceed to grant the land to them sufficiently ample and abundant of what each could cultivate, with the understanding or condition that they should inclose it with a formal fence, in order to prevent damages, and that they should not obstruct the roads, pastures and watering places. The justice of the peace thereupon stated: "I meeting no impediment, proceeded to the tract, and finding the same uncultivated and unoccupied, took the petitioners by the hand, and leading them very slowly and in full legal form, in virtue of holding competent authority, etc.," he then placed the five parties before mentioned in possession of the land they prayed for, for cultivation in full legal form, and stated that they, at the instant they received their liberal donation and were favored in this manner, shouted with joy, saying huzza for the renowned sovereignty of the Mexican nation, and he directed them to inclose with a regular fence, so that they might not have

to claim dagames, and closed by saying: "And to the end that this grant may in all time exist, I authenticate the same under the authority conferred upon me, with my attending witnesses, for the lack of a notary public, there being none in this department; and it is done on this common paper, there being none of the proper stamp, the new settlers binding themselves to supply the same of the proper stamp whenever they can opportunely procure it."

The Court of Private Land Claims rendered its decision, pages 62 and 63, confirming the said grant. Appellant's attorney objects to the confirmation by the court.

1. Because "the departmental governor had no authority at the date of the grant to make the decree," and for argument simply refers the court to his brief in the case of Luis Ortiz et al. vs. The United States, No. 20. In that case, the same counsel who represents the appellee in this represented the appellee there, and his brief in that case is also referred to as containing his argument upon that point.

2. Appellant's counsel objects to the decree, because "even if the departmental governor had authority to make a grant the indorsement by Governor Armijo, on the muniment of title here presented, is not a grant." He first commences by stating that the indorsement is not properly translated, and then undertakes to give a translation of the indorsement or granting decree for the Governor, which is in no manner correct, not even as near correct as the one indorsement or granting decree of the Governor, which is in no manner correct, not even as nearly correct as the one contained in the record, because he undertakes to change the words "las poseciones" to "possession;" also, other changes. Possession, when referred to the act of taking control, occupying and managing land, is a word in a singular number and not plural, and is preceded by no article. In the grant here, the word is in the plural, and is preceded by the article "the," which is also in the plural, and can only be translated literally, "the possessions," but when translated in the connection in which it stands and the other words with which it has reference, it means *the lands*. It is followed by the words, "which the petitioner

describes," or, as it is translated in the record, "referred to by the petitioner." The words in Spanish translated "referred to by the petitioner," and which we say is better translated by "which the petitioner describes," are "que el petente espone." The only question to determine is whether the Governor meant by that grant to *"accede"* to the petition or the prayer of the petition, because the regulations of November 21, 1828, article 4, state: "The Governor will accede or not to such petition in exact conformity to the law." See regulations translated, Hornsby vs. United States (10 Wall., 231).

To ascertain what is meant by this decree, the petition must be taken into consideration to see what was asked, and what was acceded to. That petition does not ask for possession only, but it asks for direct grant of the land mentioned. Then we look forward to see what construction is placed upon that decree by the prefect and the justice of the peace, who had the execution of it, because the decree itself requires its execution, both by the prefect and by the justice of the peace, they being officers intrusted with its execution. The construction placed upon it by them must be given great weight in determining what is meant by it; that is, whether it is meant that the petition is acceded to, or something else was meant. It is a rule of law well established that the courts will defer to the political and judicial authorities of other countries in the administration and interpretation of their own laws. (Cavazos vs. Trevino, 35 Tex., 165, and authorities cited.)

Fremont vs. The United States, 17 How., 552, says:

"As the Governor deemed himself authorized under the circumstances to dispense with the usual plan, and his decision in this respect was sanctioned by the other officers intrusted with the execution of the law, it must be presumed that the power he exercised was lawful, and the want of the plan did not invalidate the grant."

If what they did could, by any construction whatever, be considered or adjudged, as done in accordance with the petition, then that construction must be given to it by this

court. The prefect directs the justice of the peace to ascertain if the land solicited is vacant, and if there would result from its being granted any damage to third parties. The only condition under the law of 1824 in regard to granting lands to citizens was that it should be vacant public land. There was no particular way in which the governor was required to make that appear. There is no reason why he could not accede to the prayers of the petition, provided the land was vacant. The petition itself recited that the land was vacant. The Governor acceded to the petition, evidently from the construction placed upon it by his subordinates, the prefect and justice of the peace. They certainly understood that he had done so, and the land had turned out to be vacant, and the grant was operative upon those conditions. In fact, the Governor's decree was a decree acceding to the petition, provided that the land was vacant, and its granting did no harm to any third person. That was not the district in which the Governor had his official residence, like the one in the Luis M. Ortiz case, so he was bound by whatever information might be given by his subordinates, and took their word for it. There was no particular form prescribed in which the Governor could accede to the petition, if what he did indicated that he acceded to the petition it was just as good as if he had made it in the form of a complete and perfect grant. In Arguello vs. The United States (18 How., 243) the court says: "By the fourth section the Governor, being thus informed, may 'accede or not' to the prayer of the petitioner. This was done in two ways—sometimes he expressed his consent by merely writing the word 'concedo' at the bottom of the expediente. At other times it was expressed with more formality, as in the present case, but it seldom specified the boundaries, extent or conditions of the grant. It is intended merely to show that the Governor has 'acceded' to the request of the applicant. * * * It is not itself such a document as is required by the eighth section, which directs that the definitive grant asked for be made a document signed by the governor shall be given to serve as a title to the parties interested."

Thus it will be seen that this court has decided that all

that is necessary in the Governor's decree is that it shall show that the Governor "acceded" to the petition, and we insist that that decree must be construed by his officers, who had to execute it, and that their construction must govern, it provided there is anything to show or anything that may be understood which would in any event justify that construction. We claim that the petition itself, which only asked for a grant, and gave reasons for it, and complied substantially with the law, is the first thing to be taken into consideration when construing that decree. Second, the order of the prefect, who directs that if the land is vacant and no damage will result to third parties, that the same should be given as described by the petitioner. Then the action of the alcalde also, in placing the party in possession, must be considered, because he treats it as a grant by the Governor when he says: "And in this joy they plucked up grass and cast stones as being lawful proprietors of the land, which they wished to irrigate with the water of the valley of the Lama, as relying upon that small water course, they had applied for the donation:" and at the end of his act of juridical possession he says: "And to the end that this grant may in all time exist, I authenticate the same under the authority conferred upon me, with my attending witnesses, etc."

These expressions by the justice of the peace, as well as those by the prefect, are constructions which they placed upon the decree of the Governor showing what they understood him to mean, and we claim that the decree of the Governor intended to "accede" to the prayer of the petition, and was, in fact, the act of acceding to the prayer of the petition, provided the prefect or justice of the peace should find that the land was vacant, and that no harm would be done to third parties. Can any other reasonable construction be placed upon this act. The United States attorney claims that he meant to simply refer the matter to the prefect in order to get a report. If that was so, why did he direct the prefect to cause the corresponding justice to give (or deliver) the land or the possessions which the petitioner described, or stated in the translation, "referred to by the petition," if he had not intended that as soon as that

fact was ascertained the decree should operate by way of acceding to the petition, then he should never have used those words. The prefect, following up that idea, says that the justice will investigate whether the tract applied for is vacant, and whether injury to any third party would result from granting thereof, and, none resulting, he proceeded to "grant" the land in abundance, etc.

The Supreme Court of the United States, in Fremont vs. The United States (17 How., 556), says: "It is proper to remark that the laws of these territories under which titles were claimed were never treated by the court as foreign laws, to be decided as a question of fact. It was always held that the court was bound judicially to notice them, as much so as the laws of the state or of the Union. In doing this, however, it was undoubtedly often necessary to inquire into *official customs, forms and usages.* They constitute what may be called the common or unwritten law of every civilized country."

In the brief of the counsel for appellees, in the case of Luis M. Ortiz vs. The United States, made by the same counsel in this brief, reference is made to quite a number of decrees of the Governor of New Mexico, in which, for the period extending over twenty years, he acceded to the prayers of the petitioning grants in nearly the same language used in this case, and all of those grants were acted upon favorably by the Surveyor General and by the Congress of the United States, and the decrees therein were deemed sufficient to show that the Governor had acceded to the prayers of the petition. The case of Arguello vs. The United States (18 How., 540) shows that the word in the regulations which Reynolds undertakes to translate "grant" is "accede," and not "grant," as appellant's counsel insists upon.

The attention of the court is directed to the fact that neither article 3 nor 4 of the regulations of 1828 are correctly translated in the appellant's brief, but that a correct translation of them is found in Rockwell's Mining Law and in the statement of the case in Hornsby vs. The United States, 10 Wall., ut supra.

It will be remembered by the court that it is a rule of

law that a construction placed upon laws and decrees of a foreign country by the officers of that country charged with the execution thereof is binding upon the officers of another country having to deal with the same. This is law laid down by this court, as well as the Supreme Court of Texas and various other courts, and does not seem to have been departed from.

Cavazos vs. Trevino, 35 Tex., 165.
Fremont vs. The United States, 17 How., 552.

II.

Appellants' counsel insists that a grant could not be legally made until there was a report. As there was no form particularly to be followed by the Governor, he could make the grant in the manner in which he liked; that is, he could accede to the petition in the manner which he thought best. He could provide that it should be operative if a certain state of facts existed, and authorized certain officers to ascertain that fact, and if it was found to be true by them, they could carry out the terms of the concession, or whatever was acceded to. It might be that the justice of the peace would finally become the arbitrator as to whether the grant or decree of the Governor acceding to the petition could take effect, but that was only upon one condition, and that is that he (the justice of the peace) found the land to be vacant, and that no injury would result to any third party.

Suppose Armijo had made an absolute grant, and at a subsequent time had found or believed that he ought to have inquired of the local officers as to the facts, as to the competency of the grantee or the fitness of the land to be granted, and had ordered a subsequent investigation, and it had been returned to him and he had thereupon made no change in the grant, it certainly would not have been held that such a grant was void. In this case he trusted to cer-

tain officers to ascertain a given fact, and said to them: "I accede to this request provided the land is vacant. You will ascertain if such is the case, and if so, carry out this concession by giving the land to the parties." Is there anything in that so inconsistent with the spirit and object of the laws of Mexico that it would render the Governor's decree void? Appellee's counsel believe that under the case of Hornsby vs. The United States (10 Wall., 232) the Governor had power to make the grant, and that having made it, or acceded to the petition, his grant conferred a title which should be confirmed; that is, it was not void, but it gave an equity which the parties entering into possession and acting upon it in good faith for fifty years, had the right to ask of this court its confirmation.

There is no pretext that the possession here given was either temporary or permissive solely. All such possessions as that which were given in California were done to enable the party to mark out his boundaries and prepare his map before making his application for the grant at all.

III.

The third point argued by appellant is: "Assuming this indorsement to be a grant, and to have been made under the colonization law of August 18, 1824, and the regulations of November 21, 1828, as contended for by claimant and as held by the court, this is not such a claim as the Court of Private Land Claims had authority to confirm."

The contention is that the grant not having been confirmed by the departmental assembly, it did not have a status such as this court was bound to recognize or confirm, so again we call attention to the case of Hornsby vs. The United States (10 Wall., 232), where this entire subject is fully discussed and decided.

It is also contended that the possession by the grantees is not proven as complete and perfect as it might have been. It was proven sufficiently complete to satisfy the land court,

who heard the evidence. But again we must insist that the grantees and their assigns cannot be held down to the most rigid and exact proof of such facts. As in the former brief, United States vs. Ortiz, we call attention to the fact that the government had been guilty of laches in withholding for half a century the organization of this court, so that parties could come in and make the proofs. There was a difference of forty years exactly between the time of the establishment of the California commission and the establishment of the land court. Witnesses who knew the facts had died. The grantees were all dead or moved away. The memory of people in a half century is liable to fail. Witnesses become so old they do not remember facts, or have not the physical condition to attend the court, or even strength enough physically or mentally to support an examination. Yet we claim in this case that we have shown ample and complete proof of possession by the grantees themselves. We have also shown possession of their assignee, and that the assignee had the land fenced; that the grantees lived upon it and cultivated it; and the assignee lived upon it and cultivated it. It is a principle that in looking back over a tract of land if you can show a given status of it at the particular time, such as that it was occupied and cultivated and had houses on it. That such creates a prima facie case. That it has always so existed from the time it was required to have existed, and the burden is then shifted to the other side to show a different state of affairs. In this case we have produced a witness who saw the grant delivered to the five parties He was very old, and did not seem to know much more. Probably his memory was so bad that he could not remember facts, or, more probably, owing to the exposed locality at that time, as is shown by the petition for the land and the requirement for the grantees to be armed. A witness living in that vicinity, such as this one, stayed very close to his own house, and did not look after what people in another settlement were doing. How many members of this court can tell now the amount of land which was in cultivation five or six miles from their residence fifty years ago? What houses were built on it; who lived there, or any other fact

or circumtance connected with the occupation of such land, except in a very vague or general way? One of these grantees, it is said, was alive at the time the case was tried. He was not brought to court because he was a non-resident, was too old and weak to travel, and had absolutely lost possession of his mental faculties, and was almost entirely blind and deaf besides. This fact was not introduced in evidence, because it was thought that the evidence was very full as to possession when the great lapse of time which had intervened was to be taken into consideration.

IV.

Appellant further insists this claim cannot be confirmed for the reason that there is no archive evidence of the same, and no record of the alleged grant in the archives derived from the former government. The record in this case shows that the grant was introduced both as to the original and translation, and that it came from the office of the Surveyor General. It is true that it was filed by claimants in the case when the matter was presented to the Surveyor General in 1872 for confirmation by him, but it is understood that it then came from the archives, which were in the Surveyor General's possession, and were simply filed with him as a paper in it, as evidence in that case. The paper having come from the proper custodian of the government, claimants were not compelled to introduce further testimony in regard to that fact. The burden was then thrown upon the government to prove that it did not belong to the archives. It is denied that when it was used on the trial of the case in 1872 before the Surveyor General that it came from private hands. Besides, there were no objections to the introduction of the grant, even if the contention of the appellant was true. The grant was admitted in evidence without any objection or intimation of an objection on any ground whatever (see page 4); and no objection was made during the whole trial for the want of sufficient proof to support said grant. No demurrer to the evidence, either orally or otherwise, was made, and no

motion was made to strike out the evidence as to the said grant, and attorney of appellee insists that it is too late, after an appeal has been taken and the case has been brought into this court, to raise objections which should have been raised in the court below, and which, if they had been raised, and had been held valid, might have been removed upon further evidence.

United States vs. Cambuston, 10 How., 65.
United States vs. Johnson, 1 Wall., 326.
United States vs. Auguisola, Ibid 352.
United States vs. Yorba, Ibid, 412.

Even if the proposition urged was tenable in this case the same has been overcome by the proof of possession. The evidence in this case shows the delivery of the possession by the justice of the peace, the entering into possession by the grantees residing upon the property, they and their assigns up to the present time, a period of fifty years, during which time there was no pretense that claimants were not the owners or that any other person claimed the title to the property; those in possession have remained undisturbed, continuous, open and notorious. It is insisted that a possession such as this, which is notice to the world, and when neither the government of Mexico nor of the United States have undertaken to dispose of it to other parties, but have stood by and recognized the rights of such possession, obviates the necessity of proof of archive evidence in case there is any failure in this case.

In Pico vs. The United States (2 Wall., 282 and 283), the court says: "When, therefore, a claim to land in California is asserted under an alleged grant from the Mexican government, reference must in the first instance be had to the archives of the country, embracing the period when the grant purports to have been made. If they furnish no information on the subject, a strong presumption naturally arises against the validity of the instrument produced, which can only be overcome, if at all, by the clearest proof of its genuineness, accompanied by open and continued possession of the premises. In this case the gen-

uineness of the grant is admitted in addition to its being clearly proven, both as to the genuineness of the signatures executing it, as well as to the possession which was given. One of the witnesses testifying that he was actually present when it was done."

See also United States vs. Alviso, 23 How., 319. Also United States vs. Polack, Hoffman's Land Cases, 297.

It is admitted in this case that the signatures of all the parties to the grant are genuine. There is no question about that. There is no question about the possession having been given and about the parties having entered upon and complied with the terms of the grant under the rule. In United States vs. Chaves (159 U. S., 455) an occupation of a property for that length of time presupposes a grant. In this case we have actually proven one, and certainly when we claim a grant which is actually proven and the possession thereunder adverse, notorious and continuous for half a century without any interruption, the necessary archive evidence will be presumed; certainly when it has been shown the archives of New Mexico have been lost and destroyed to a certain extent in regard to documents containing grants, and land titles, as was adjudicated by this court in United States vs. Chaves (159 U. S., 463).

As we have said before in another brief, the government not only waited until nearly all living witnesses were dead before authorizing the institution of these proceedings, but it so negligently cared for and kept the archives containing grants and documents affecting lands in the territory, that large numbers of them became lost and destroyed, and now we insist it is inequitable in the government, after having allowed a portion of the books and papers, as is shown by United States vs. Chaves, in 159 U. S., 463, to become lost or destroyed, to insist upon rigid proof, that the papers were filed, or ever in the archives, or that there was a record made of them, when there are none of the interested parties or officers living who are mentally capable of testifying to such facts. We insist that this document, having been pro-

duced from the Surveyor General, who is the custodian of the archives, that the burden of proof to show that such document never was in the archives, is thrown on the other side, but that if it is not, the proof of possession in good faith, the cultivation of the land, and the residing upon it, and claiming it by the grantees, their heirs and assigns, is sufficient to establish the grant, and sufficient to establish every essential which is necessary to make the grant valid, especially when we have produced from the public custodian of the archives the grant paper which has been introduced into evidence. Possession especially for so long a time will take the place of archive evidence.

V.

Appellant further contends that the confirmation of this grant is excessive, in that it is for the entire tract within the boundaries named by the alcalde, instead of only for the irrigable or cultivable lands within the boundaries, and in that the east boundary is fixed at the *summit* of the mountain instead of at the *foot*. This grant is not any part of it at the foot of the mountains. It extends, as we understand it, from near the foot of the mountain, along up the foothills and the side of a mountain to or near the summit of a mountain. The stream called the Rio del Lama is nothing but a mountain stream, which the proofs show rises in the mountain called the San Christoval mountain (testimony of Ezra Reading, page 9). So that there can be no question about the grant lying at the foot of the mountain, as that mountain extends clear down to the edge of the bluff on the Rio del Norte or Rio Grande, which is the same thing. The act of juridical possession gives the land on the east, the mountain, and after giving the western boundary as the edge of the bluff of the Rio del Norte, it then says: "Leaving the pastures, roads and watering places free eastwardly from where they cannot irrigate." So that the grant extended eastwardly up that stream

Lama as far as land could be irrigated from it. On cross-examination, on page 9, Ezra Reading was asked:

"Q. There is no land cultivated east of this road—this old trail? A. No, I believe not.

"Q. No land can be cultivated that is in the mountains east of that? A. Lots of it can be cultivated."

Then on page 9 he testifies that it is cultivated *above* the trail for a few hundred yards.

Ezra Reading's testimony on page 13 also shows that all the land running below the source of the stream Lama, which rises in the mountains, could be irrigated if there was water enough in the stream. That is to say, that is so situated that water can be carried out of the stream from its source or other places, so as to get it upon all of this land, although there is probably not enough to irrigate more than one-fourth of the area of the land. It will be observed that in giving possession of this land the prefect directed that the alcalde should "proceed to grant them of the land an abundance of what each can cultivate, etc." He was not directed to grant them as much as they could obtain water to irrigate. It was not supposed that all the lands granted for cultivation should be limited actually to the lands which a person might have water to irrigate, or that he might have capacity to cultivate at the time. In gixing those grants in New Mexico for settlement and for culivation they were always given with a view of enlarging the scope of the cultivation, as well as the scope of the settlements, and it was the policy of the Spanish government, as well as that of Mexico, to give the larger portion of the land for grazing purposes. The court will observe that by the law of 1824, which is the one under which this grant is made, section 12, it is provided: "No one person shall be allowed to obtain the ownership of more than one league square of five thousand varas of irrigable land. Four superficial ones of land dependent on the season, and six superficial ones for the purpose of rearing cattle."—Rockwell's Spanish and Mexican Law, page 452. See also De la Maza Codio de Colonization. In which last authority the law is printed in the Spanish language. This law shows the policy of the Mexican government in making grants to

distribute the kind of land out of the three kinds, estimating one-eleventh for irrigable lands; four-elevenths for lands which might be cultivated from rainfall (seasons), and six-elevenths for the purpose of grazing and stock raising. It will not be presumed that in making this grant the purpose was to deliver solely the land which was irrigable, or only so much of the irrigable land as there was water to irrigate, but the purpose was to give all the land which might be irrigated, along with the attendant portions which might be cultivated from the rains, and that which was necessary for stock raising and grazing. That is, if we take into consideration the policy of the law under which it was made. The letter of the law, however, never was followed in making these provisions. Tracts of land were granted customarily to the amount of eleven leagues, regardless of the portion of each kind of land, but it is very difficult to say when a stream rises very nearly to or at the top of a mountain and runs down to a river below, what portion of that land cannot be reached by water in a ditch. But the alcalde, in making this grant, while he was directed to "proceed to grant them of the land an abundance of what each can cultivate," decided that proposition himself. He was left as the judge of the amount which should be contained in the grant that should be made, and he granted the same, specifying the boundaries. "On the north the Rio Colorado grant; on the south the dividing line of San Christoval"; that is to say, the point where the northern boundary of the San Christoval grant reached; "on the west the edge of the bluff of the Rio del Norte, and on the east the mountain," specifying the leaving of the pastures, road and watering places free, eastwardly from where they cannot irrigate. This expressly provided that the grant should extend as far eastward as the land could be irrigated. The proof is that the Lama stream had its source high up in the mountain very near to or at the divide, and that water for irrigation could be taken out directly at its source and carried over the land, so that all of the land from the source of that stream downward could be irrigated. The amount *above* the source of the stream in all probability would not reach a hundred acres. It would be

barren land, unfit for any use, and almost up to the timber line. At that point, the two ridges on the opposite side of the Lama stream, at the top of which the court has fixed the northern and southern boundaries, following the meanderings of the stream, come together, i. e., at the top of the mountain, possibly a mile or two above the source of the river, and at the source of the river they are very close together, probably only two or three or four hundred yards apart. The attorney for the appellant argues that as the alcalde required the party to fence his land, that he could never have meant to give the whole tract, as it would entail an extraordinary expense. No one in reading that grant would understand that all of the grazing lands and temporal (season) lands, when they were not cultivated, should be fenced in. The requirement to fence in the lands was without doubt to mean and to apply to those lands only which should be actually planted and crops produced on them. The alcalde says the fence shall be placed there so that they shall not have to claim damages. The laws of Mexico were very rigid about damages committed on growing crops by loose animals. This was somewhat of a remote settlement, a place where the people of Colorado and the people of San Cristoval allowed their animals to range without being under herd, so that they provided that the lands should be fenced so far as they were cultivated, we contend, so as to avoid damage to those crops. This court must take judicial notice of the laws, regulations and customs prevailing in New Mexico in regard to all matters connected with private land claims. But this contention which we make is borne out by the order of the prefect, who also says: "They shall inclose the same with a regular fence in order to prevent damages, and that they do not obstruct the roads, pastures and watering places." As a direct provision guarding against placing fences which would obstruct the roads, pasturages and watering places. They shall allow the watering places to be open for all animals to reach them. They should not only keep the pastures of this land unobstructed for the benefit of their own stock solely, but the customs which prevailed in the country of never fencing up grazing lands, but for every per-

son's stock to run at large and go over on his neighbor's grazing land required them to leave it unobstructed for all such use, in addition.

The justice of the peace did not pretend to distribute land to each one of the individuals, but he gave it to them all as a whole, supposing without doubt that they would divide the land which they wished to irrigate between themselves, and when so divided each one would fence his irrigated lands so that the stock of his neighbor would not interfere with it.

It cannot be said that those parties did not desire to irrigate every particle of land which might have been reached by water in a ditch, although the justice of the peace says, as stated, that they plucked up grass and cast stones, as being lawful proprietors of the land which they wished to irrigate with the water of the valley of the Lama; as relying upon that small source, they had applied for the donation. This last paragraph says that, "relying upon the small source of water in the Lama, they applied for the donation." Then the justice of the peace says: "I therefore designate to them for limits"; then he gives the boundaries showing that the limits of the possessions and ownership of those parties were to be prescribed by the actual limits designated by him. It is true the Lama was only adequate for the cultivation of a portion of this property, but they expected to live there as settlers and colonists, and the law allowed them temporal lands, and also lands for grazing. Naturally they were expected to own live stock. The alcalde only provided that the pastures, roads and watering places should be left free to the east of where it was not *possible to irrigate*. If it was *possible* to *irrigate* any place, then that land was not left free, but you must go the eastward of it to get the land which was free, and the proofs have shown that it might be irrigated clear to the source of the river, which is practically at the top of the mountain.

It is claimed that the land near the top of the mountain would be exceedingly valuable for mineral. Nobody has yet discovered that fact, but possibly it may be true; but if it be true, the government of the United States, in estab-

lishing this court, expressly reserved the precious metals from the operation of the act.

The Court of Private Land Claims, in the case which came before it expressly on the point as to where was the point of boundary when a natural object, such as a mountain, a stream or a hill, was called for, distinctly held that in the case of a mountain it went to the *top* of the mountain, and that was in the case of the Helena Gallegos grant, decided December 6, 1893, by the Court of Private Land Claims, in which the following language was used:

"The boundaries described in the act of possession (in the English translation filed) are as follows: 'On the [north] a small ruin, and on the south some lagoons which are contiguous to the walls of Jorge, on the east the Sandia mountain and on the west the Rio del Norte.'

"It is contended by counsel for claimants that under this description, and the claim, use and possession of the occupants, the eastern boundary line should go to the summit of the Sandia mountain, while the attorney for the United States insists that it stop at the foot of the mountain.

"The distance between the top and the bottom of a mountain or hill is often considerable, and the character of the land on the slope may generally be taken to furnish in itself a motive for the descriptive words as well as a reason and guide for interpretation of meaning. In all this region of country, with its peculiar physical and climatic conditions, 'wood, water and grass' are the most desirable and requisite qualities of a rancho or land grant. That mountains from the snow which lodges upon their summits furnish water, timber and more abundant and nutritious grasses upon their slopes than are to be found on the plains below, and, often, the only water, timber and grass to be had, is a fact so notorious as to compel judicial cognizance. Hence, if there were no other reason, it is believed that this physical and natural one might well be regarded as sufficient for the conclusion that the petitioners, upon praying for the grant, meant and expected that the boundary should include the adjoining side of the mountain to the summit, and that the claim and user by the occupants of such area for the wood, stone, water and grass for pasturage should,

in the absence of certain proof to the contrary, determine such boundary description to mean the summit of such natural object designated.

"An authoritative rule of construction is, that, where a deed is uncertain or ambiguous in description, the construction given to it by the parties themselves, as shown by acts and declarations, is to be deemed the true one, unless the contrary is clearly established. Reid vs. Proprietors, 8 How., 274.

"And when boundaries are doubtful, actual occupation for a number of years up to the line where the party supposes his boundary to extend, without objection from the adjoining proprietor, is strong presumptive proof of the true place of the line. 21 Am. Decisions, 680.

"But a proper interpretation of the descriptive words themselves is sufficient to fix the summit of the mountain as the correct definition of the terms employed. There would be insuperable difficulty in determining the exact point of the foot or bottom of a mountain or hill sloping gradually away from its summit for many miles before reaching a level, or determinable point, where it could be said that the mountain ended though the slope did not.

"But there is no difficulty in ascertaining where the top of a hill or mountain is. That point can always and easily be made certain and definite.

"Upon the point of interpretation where the term mountain is used alone and unqualified, we are not unsupported by apt judicial decision.

"In the Supreme Court of California, in the case of Ornbaum vs. his creditors, 61 California, 459, the words of boundary decription, 'on the south by what is known as Redwood mountains,' were objected to as indefinite, and the court in holding the description to be good, said: 'It would be a novel proposition of law in this state that a mountain or range of mountains is not a definite boundary of land. It is as much so as a tree, a rock or a stream a half mile wide, in which the boundary would go ad medium filum aquæ. The boundaries usually go to the middle of the natural object named, except in the case of a range of mountains, when it goes to the comb or dividing line of the ridge.'

"This construction must be approved as the most rational one in all such cases.

"In the case under consideration the precise meaning of the words gives even less room for doubt. The English translation on file, viz: 'On the east the Sandia mountain,' is deficient and inadequate.

"The Spanish words in the original text of the archive document are, 'por el oriente con la sierra de Sandia,' a proper translation of which, into requisite English is: 'On the east by the crest of Sandia' mountain. The primary meaning of the word 'sierra' is a saw.

"As applied to mountains its figurative, general meaning is a range; as 'La Sierra Madre,' 'La Sierra Nevada,' the Mother range and the Snowy range of the Rocky mountains. In a special application of the term to a single mountain, or moutnains not properly constituting a range, the word sierra especially refers to and denotes the serrated crest, comb, ridge or summit. The term may be applied in common parlance, to entire mountains, smoothly roundde, as to those with rugged ridges, but when employed in relation to a boundary point or line, there can be no room for doubt that the 'cumbres,' apex or summit is intended as the true and precise definition of the land mark."

Also in the Supreme Court of California, in Ornbaum vs. his creditors, the court says: "It would be a novel proposition of law in this state, that a mountain or range of mountains, is not a definite boundary of land. It is as much so, as a tree, a rock, or a stream one half mile wide, in which the boundary would go *ad medium filum acquae*" The boundary usually goes to the middls of the natural object named, except in the case of a range of mountains, when it goes to the dividing line of the ridge. A deed is also construed *ut res magis valeat quam pereat*. This rule applies to a declaration. There was a dissenting opinion in that case, but he did not dissent on that ground. Four able judges concurred in the opinion and evidently the remaining judge concurred in that finding, as he did not express any dissent on it.

What other construction could be placed upon a boundary call when a grant of land was located on a side of the

slope of a mountain and did not extend down actually to the foot of the mountain, and simply occupied the land on both sides of the stream as far up as the land was possible to be irrigated, and the testimony hows that the source of the stream is very close to the top of the mountain and that from the source it was possible to irrigate the land all the way down? We insist that this is a showing of the proof, and instead of the alcalde, or rather the court in this case, giving more land than was granted, it has actually drawn in the boundaries on the north and south so as not to give more than one-half, or even less than one-half than the amount which should have been given.

The attorney for appellants seems to think that the Supreme Court of California did not understand their business or the customs, rules and regulations in that state in regard to the location of a boundary when a mountain was called for by a boundary. The situation in California and New Mexico was practically the same. To a very great extent, the country in each one of those jurisdictions is cut up by mountains and valleys, outside of the Rio Grande valley from about opposite Santa Fe south, and a portion of the lower valley of the Pecos river, none of the valley in New Mexico have any considerable breadth. Most of the grants which were made in New Mexico of land, were made on mountain streams; generally rising near the top of the mountain and flowing down into some of the larger waters, like it is in the case in question. It is a tract of land entirely on the western slope of the mountain, and if its eastern boundary is to be measured by the foot of the mountain, or the bottom of the foot hills which is the foot of the mountain, it would throw it to the westward of the western boundary, which is the edge of the bluff overlooking the Rio Grande, while the foot of the mountain would really be the bottom of that bluff very nearly to the edge of the river.

In United States vs. Pico, 5 Wall., 536, this court says: "Where a doubt arises upon a meaning of the grant, as to the quantity ceded reference may be had to the juridical possession delivered to the grantee. This proceeding involved an ascertainment and settlement of the boundaries

of the land granted by the appropriate officers of the government specially designated for that purpose and had all the force and efficiency of a judicial determination. It bound the former goverment and is equally binding upon the officers of our government." To the same effect is the case of Graham vs. the United States 4 Wall., 260.

Appellant's counsel have cited several decisions of the Secretary of the Interior and of the Land Office, but such decisions are in no manner controlling, or even as advisory. Those decisions are only good when the Land Department has the control of a given survey and locates the natural objects. They are not in any manner as precedents for a court of record.

T. B. CATRON,
Attorney for Appellee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 35.

THE UNITED STATES, APPELLANT,

vs.

CLARENCE P. ELDER ET AL.

ADDITIONAL POINTS AND AUTHORITIES FOR APPELLEE.

The first proposition submitted by the appellant in his brief is that "*Under the colonization laws of Mexico, in force at the date of the grant, the governor of New Mexico had no power or authority to make the grant, or initiate proceedings for that purpose, and that the grant was void for that reason.*"

It is contended by appellant that the Territory of New Mexico as a Mexican territory ceased to exist in 1837, and that New Mexico was made a department; that political chiefs were abolished and governors created; that territorial deputations were done away with and departmental juntas took their place.

It is true that in form this was done, but it was a change

in name and not in substance. The Territory remained under the name of the department with its same limits. A governor took the place of a political chief, with the duties imposed upon him to execute and carry out the laws. The departmental junta had the same duties and powers conferred upon it as existed in the territorial deputation, possibly more.

This question, however, has been adjudicated time and time again. There is nothing in the act creating the Court of Private Land Claims which in any manner affects the Territory of New Mexico in regard to this point differently from what it did in California. There was no special legislation in Mexico for either one of the Territories. The Supre ne Court of the United States has repeatedly construed the Mexican act of August 18, 1824, and the regulations of November 21, 1828, in considering the validity of grants made subsequent to 1837, the time of the alleged change, and have uniformly construed that those acts were in force and regulated the mode and manner and power to make grants of the public lands in the Republic of Mexico; and in a case taken from New Mexico (United States *vs.* Vigil, 13 Wall., 450), which was in reference to a grant made in the year 1845, while said grant was rejected by the Supreme Court, still it was *held that the law of August 18, 1824, and the regulations of November 21, 1828, were in force, and were the only laws in force regulating the making of grants.* This decision was with regard to the law which was in force in New Mexico in 1845, and the courts say:

"It has been repeatedly decided by this court that the only laws in force in the Territory of New Mexico for the disposition of public lands, with the exception of those relating to missions and towns, are the acts of the Mexican congress of 1824 and the regulations of 1828."

United States *vs.* Osio, 23 How., 275 *et seq.*
United States *vs.* Cambuston, 20 How., 60 *et seq.*
This case being founded on a grant made in 1846.
United States *vs.* Reading, 18 How., 3, 7.
Hornsby *vs.* The United States, 10 Wall., 236.

In the case of Hornsby *vs.* The United States, *ut supra*, the court say:

"That the governor under Mexico was authorized to make grants of land in the *department of California is not questioned*, and that the instrument produced in this case is genuine and was issued by him, is admitted, etc."

The case of The United States *vs.* Reading, *ut supra*, contains quite a lengthy discussion on page 7 in regard to that law and regulation, to which the attention of the court is respectfully invited.

See also—

United States *vs.* Vallejo, 1 Black, 541.
United States *vs.* Workman, 1 Wall., 761.

In this last case the court says:

"*Ample authority was conferred* upon the governor of California to grant vacant lands belonging to the supreme government. *Such authority was derived from the colonization law of the 18th of August, 1824, and the regulations of the 21st of November, 1828, as has been affirmed by repeated decisions of this court.*"

The grant in this case was made in 1846. It was held not valid because it was a disposal of mission lands and *not vacant public lands.* This case expressly calls attention to a statement in the act of June 12, 1843, and the new constitution then adopted (page 451), showing that the matter was entirely before the court.

In United States *vs.* Vallejo, 1 Black, 552, there were two grants under considerations, one as a colonization grant, dated March 15, 1842, the other the 19th of June, 1844. This court, speaking of that regulation, on page 552 says:

"The above are the only laws of the Mexican congress passed on the subject of granting the public lands, with the exception of those relating to the missions and towns, which have no bearing on the question. None others have been

produced in the argument, nor have our researches found any, nor were any others discovered by the public agents which were authorized by this Government to inquire particularly into the subject."

United States *vs.* Sutter, 21 How., 177—This grant was made about the year 1838.

The attorney of the United States contends that by virtue of the law of April 4, 1837, which provided that "the Government, in concurrence with the council, shall proceed to make effective the colonization of the lands that are or should be the property of the Republic by sales, leases, or mortgages," etc., repealed the colonization law of August 18, 1824, and November 21, 1828. There is a provision at the end of that law which says:

"Not being embarrassed by the laws heretofore enacted on colonization, whose provisions are repealed in so far as they conflict with the present, re-enacting, however, the prohibition of article 11 of the law of April 6, 1830."

Article 2 of the law of April 6, 1830, provides:

"In the exercise of the power which the general congress reserves to itself, in article 7 of the law of the 18th of August, 1824, it is forbidden to colonize foreigners of adjacent countries in those States and Territories of the federation which adjoins their nations."

Section 7 of the law of August 18, 1824, provides:

"Prior to the year 1840 the general congress shall not prohibit the entry of foreigners to colonize unless imperious circumstances force it to it with respect to the individuals of some particular nation."

It will thus be seen that the law of April 4, 1837, simply provides an additional mode of colonization—that is to say, it provides that the General Government may act concurrently in the matter of colonization, for the purposes

and subject to the limitations provided in that act—that is, the Government, independent of what the governors of the Territories might do, may sell, lease, and mortgage the lands, applying the income therefrom to the funding of the national debt contracted or to be contracted. There is nothing in conflict with the colonization laws of 1824 in this act. Whichever one of those authorities should act first upon a given piece of property would supersede the other as to that property. If it had been the intention of the Mexican congress to repeal the colonization laws of 1824 and the regulations of 1828 absolutely, as contended by the Government, why did it not say so? Certainly by saying that they were only repealed in so far as they conflicted with that act is an implication that they were not repealed in toto, but that something remained under those acts. If anything remained, what was it? If it takes away from the governor the power to make grants, then those acts are as completely dead as an individual who may be decapitated. None of the powers following the right to make the grant by the granting authority could exist without the exercise of that authority. If the power was left in the governor to make the grant, which must have been so, or the whole act was repealed, and the words in the act of 1837 would be useless, and every other provision would remain to carry out the terms of those grants which could be made. Evidently what was meant by repealing the colonization laws so far as they conflicted with the act of 1837 was to estop the governors from acting upon those lands where the Federal Government might have initiated proceedings to sell, mortgage, or lease. This construction is further carried out by the provision at the end of the section continuing in force the prohibition contained in article 11 of the law of April 6, 1830, which referred to article 7 of the law of 1824. If by the provision of the law of April 4, 1837, the whole colonization laws were repealed, then why did that section say that "in the exercise of the power

which the general congress reserved to itself in article 7 of the law of the 18th of August, 1824, it is forbidden to colonize foreigners of adjacent countries, etc.?" If the whole law was repealed, section 7 would have gone down with it, and that prohibition was unnecessary. On the contrary, it would seem that the Mexican congress, when it enacted the law of April 4, 1837, rather supposed they might repeal section 11 of the act of April 6, 1830, and thereby leave in force section 7 of the act of 1824. Certainly there is no intent or purpose shown by the law of April 4, 1837, to annul the previous colonization laws, and by continuing in force section 11 of the law of 1830 they refer directly to the act of 1824, and show that that was in their consideration at the time, and it was not their intention to repeal the whole law, but only so far as it might conflict with the act of 1827. If both those acts can stand together, there being no direct repeal of the first act, the court must construe them so that they will both be in force, and only the act of 1824 gives way whenever there is a direct conflict in some respects to that of 1837, and it is impossible to see how the latter act repeals the former one in toto, or any part of it which would prevent the governor from making a grant, because that is the soul of the act, and if it is destroyed, all must go.

The appellants also cite with confidence a paragraph in the opinion of the court in The United States *vs.* Coe, 170 U. S., 696, wherein Associate Justice McKenna, in delivering the opinion of a majority of the court, uses this language:

"Between the date of the law and the grant in this case no regulations to be observed in carrying out colonization were established. On the contrary, by a law passed April 4, 1837, all colonization laws were certainly modified and may be repealed."

The law was then copied in full in the opinion, and no further comment is passed on it. Justice McKenna does not say that the law was repealed, but only modified. It will be noticed that that was a decision wherein four of the justices of this court absolutely dissented, leaving a majority of only one to support the decision of opinion, and it will also be noticed that Justice Gray only concurred in the result. What may have been his differences with the majority of the court is not known. It is hardly to be presumed, however, that when he concurred in the result only that he went to the extent of saying that the large number of decisions of this court heretofore rendered holding that the law of 1824 and the regulations of 1828 were in force up to the 7th of July, 1846, in California, and necessarily up to the 18th of August, 1846, in New Mexico, were bad law.

It is further suggested to the court by the argument that when there has been such a long and unbroken line of decisions by the highest court in this country in reference to the title to real estate in the Mexican territories acquired by our country, and under which large numbers of our citizens have invested their money upon the faith of those decisions being a rule of property, amounting to millions and possibly billions of dollars, certainly running into the millions in New Mexico, that this court will undertake to destroy this rule of property and cause those people who have invested their moneys on the faith of those decisions in grants which are unconfirmed to lose their investments and their property, and to lose confidence in the ability of this court to enunciate a principle of law or construe a law in such manner that on the faith of the construction they can safely invest their means. It is hard to believe that this court will do so, and counsel for appellant does not believe that at this late day those decisions under which possibly a billion dollars' worth of property is now held will be overturned and a rule of property destroyed, and that the remainder of the unconfirmed grants, which are few in com-

parison with the confirmed, will be held for naught and the investors in them be deprived of their investments, made on the strength of this court's decisions, and the rule of property established by it (Palmer *vs.* U. S., 24 How., 125).

The law of April 4, 1837, being passed subsequent to the constitution of 1836, which is claimed by appellant's counsel, abrogated the offices of political chief, territorial deputations, and the Territories themselves, certainly would be construed into a re-enactment of all the law of 1824 and the regulations, so far as they do not conflict with the law of 1837. The effect of that act is that they remain in force, except so far as they conflict with the act of 1837, and except so far as they abrogate the enforcement of the seventh section of the act of 1824 by construing the act of 1830, section 11. This construction certainly does not need authority for this court to sustain it.

Besides, the congress of Mexico, which is supposed to have known which laws were in force in Mexico, by a law enacted December 4, 1846, provided, article 53:

"The colonization of the frontiers shall not be done, without the express approval of the government, nearer than twenty leagues of the international boundaries or ten leagues of the seashore, in conformity with article 4 of the law of August 18, 1824."

Here is a direct recognition of the existence of that law of 1824, done before any treaty was made and while New Mexico was regarded by them as a part of their territory.

The law of March 20, 1837, enacted under the constitution of 1836, provides, in section 3, subdivision 3, as follows in regard to the duties of the governors:

"To comply with and cause to be complied with, the laws and decrees of Congress, etc."

In the fourth subdivision also:

"To also comply with and cause to be complied with the decrees and orders of the General Government."

In section 2 of that act it says:

"In each department there shall be a governor appointed by the President of the Republic upon the nomination of three persons by the respective departmental council (junta) without the obligation of being governed thereby in the frontier departments, etc."

The remainder of the sentence as translated is unintelligible, but is not important for this discussion.

By subdivisions 3 and 4 of section 3 it is made the duty of the governor to comply with and to cause the laws and decrees of the Congress and of the General Government to be complied with. That certainly embraced every existing law and decree and every one that might be enacted, and it seems that by section 2, in the frontier departments to which New Mexico belongs, he was given supreme power, although he was given a departmental council, he was under no obligation to be governed by it. If anything can be said in regard to this constitution and the laws passed under it to carry it out, affecting the title to grants of the public lands in the frontier department such as New Mexico, it would seem that the action of the governor in complying with the laws was supreme; that he could act entirely in those matters of grants himself; that as he was not bound by the departmental council or junta, his acts would be just as valid without them as with them, so that a grant in that view would become definitely valid as soon as the governor made it.

We contend, however, that this court has repeatedly and consistently held and decided that the law of 1824 and regulations of 1828 are in force or were in 1846, and that they were the only laws and regulations then in force. We think, however, that upon the consideration of the argument for the United States, if we are to admit that the constitution and the laws passed under it of 1836 and subsequent thereto did affect the power of the governor to grant

lands, then that power was enlarged and made much more extensive.

Also by the constitution of June 13, 1843, art. 140, 4 Dublan & Lozano's Laws, 443:

"The duties of the governors of the departments are:
* * *

2. "To publish the laws and decrees of the national congress, and the decrees of the President of the Republic, not later than the third day after their receipt, and shall cause them to be enforced within the territory where he exercises his functions."

This also made it his duty to execute the laws and decrees of congress and the president. The law of August 18, 1824, and the regulations of November 21, 1828, were only abrogated so far as they conflicted with the law of April 4, 1837, which only provided an additional step to colonization or disposal of the public lands.

Do not these two constitutions simply provide an officer to execute and enforce the laws of the Republic, merely giving the name of "governor" instead of "political chief," and expressly conferring on him full power to enforce the law? If the law could only be enforced after November 21, 1828, by a grant to be made by the "political chief," then when the "governor" took his place with the duty unimposed of enforcing the law, did he not succeed to all the powers of the political chief, so as to be able to execute the law, which required the affirmative act of the political chief or governor to enforce it?

No power except in the terms of the constitution of June 13, 1843, article 140, and article 3, sections 3 and 4, of the law of March 20, 1837, under the constitution of 1836, was conferred upon the governors, but this was enough. No special authority was required; he was given it in all cases and for all purposes.

Article 16 of the law of August 18, 1824, provides:

"The Government in conformity to the principles established in this law shall proceed to the colonization of the Territories of the Republic."

Under this the Government issued the regulations of November 21, 1828, which became the law applicable to the Territories. When the States were abolished and the Government became central, that certainly cut off the power of the States to dispose of the public land under their laws. The internal legislation and regulations adopted by them were incompatible with a centralized government.

But the law and regulations for the Territories were those of the General Government. The Territories had nothing to do with making them. Did they not continue in force if there was machinery to enforce them? Was not the machinery provided when it was made the duty of the governor to cause the laws to be enforced?

Assertion has been made on page 12 of the supplemental brief of appellant that alcaldes, prefects, town councils, departmental assemblies, and other officials indulged in the practice of disposing of the public lands in the department gratuitously and without restriction, yet it appears they did so without authority.

This is certainly a gratuitous statement. Prefects, alcaldes, and town councils had the right to dispose of, partition, and grant the common lands of any municipality in their jurisdiction, and it may confidently be asserted that such practices as are charged cannot be found to have existed outside of any organized municipal body except in two or three instances at the most, and in those the acts were disapproved by the governor or superior officer, and the citation of a certificate made by Tipton in the Chaves case does not show such to be the case. Such statements can only be made to excite prejudice in the minds of mem-

bers of this court against the administration of the land laws under Mexico; but we confidently assert that the execution of those laws was very jealously guarded by the authorities, and usurpation of authority in such matters was promptly rebuked and the acts nullified in every instance.

T. B. CATRON,
Attorney for Appellee.

No. 35.

Appx. to Brf. of Catron for Appe

UNITED STATES, APPELLEE,

Filed Oct. 16, 1899.

CLARENCE P. ELDER ET AL.

Office Supreme Court U. S.
OCT 16 1899
JAMES H. MCKENNEY,
Clerk.

Appellants' Addition to Point 1, Page 9, of Brief, Containing Various Forms of Grants Made by Governors in New Mexico from 1820 to 1846.

Considering this whole decree in connection with the petition, no other conclusion can be reached than that the Governor did thereby accede to the petition, that means the *whole* of the petition; what was stated in it by recital, as well as to what was prayed in it in behalf of the petitioner. In referring the matter to the Prefect, there is no word used to express "refer" or "directed," as we insert in *italics* at the end of our translation, but the words used are simply "al prefecto," meaning to the Prefect. This is a form that was very often used by Armijo and other governors. We will here mention a few instances of this way of making a grant, showing that it was customary in New Mexico, from 1820 to 1846, to use some such language.

In claim No. 25 John Lamy, which was the grant made August 20, 1820, and was confirmed by Congress, the granting clause was as follows: "Al Alcalde constitucional de la Eleccion para que obre con arreglo de lo respectivo a los de fuero ordinario dirijiendo nota de los del fuero de guerra a este gobierno con los documentos correspondientes para obrar como corresponda."

Which, translated literally, is as follows: "To the constitutional justice of first election, who will act according to law in reference to ordinary privileges, transmitting to this

government a note of those entitled to privileges of war, together with the corresponding documents, in order that the necessary steps be taken." That was treated as a grant, and it was understood in that, as well as in many other grants, that the words "al alcalde," or "al juez," should be preceded by the words, "granted as prayed for," and referred to the Prefect. Those words were understood.

In the grant to the people of Chillili, which was made in the year 1841 by Armijo, Governor, and in Spanish was as follows:

"Al sor. juez de la pra. Instancia del 3er. distrito judicial D. Ant. Sandoval, para que en atencion a la pobreza que es notoria tienen los solisitantes y que este Gobierno esta bien informado y dicho juez pondra en posesion segura a los solistantes del terreno que solisitan," etc., which, translated, is as follows:

"To Don Antonio Sandoval, justice of the first appointment of the third judicial district: That, taking into consideration the well-known poverty of the petitioners, and that this government is well informed of the fact, said justice will place the petitioners in secure possession of the land they ask for, etc."

This was a grant, and the words were understood as follows: "*Granted as asked and directed to, etc.*"

In the grant of Pedro Armendariz, made in June, 1820, the decree of Governor Mulgarus was in the following words:

"Respecto de que no creo in conveniente, como lo pide bajo las condiciones del decreto de balverde," which is translated "as it is not deemed inconvenient, as he requests, under the same conditions of the decree of Balverde." This was held to be a good grant, as was also that of Chillili. The words "granted as prayed for" were understood to be included before the words "as he requests." The three grants mentioned were confirmed by Congress after being favorably decided by the Surveyor General. In 1843 a

grant was made to Vigil and St. Vrain, on December 9, and was in the following language:

"Al quez de paz a que corresponde para que de la posesion a que se refieren los presentates pues este Gobno. Desea que se fomente la agricultura y las artes," which was translated nearly the same language as our grant except not as strong.

"To the justice of the peace of the proper jurisdiction, who will give the possession referred to by the petitioner, as this government desires to encourage agriculture and the arts." The words "granted as prayed for" being understood as preceding the words "to the justice, etc."

The grant to the town of Tijique was made in about the same language, and made in 1834; it and the one preceding it were both confirmed by Congress and by the Surveyor General.

In 1843 Armijo, on December 30, made a grant to Lee and Baubien in the following language:

"Pase al prefecto para que si el terreno que si solicita no tiene embaraso aga que se de la posesion a que se refieren los presentantes," which is translated as follows:

"Referred to the prefect, in order that if the land petitioned for be not otherwise disposed of, he cause the possession referred to by the petitioners to be given." This grant was approved by the Surveyor General and confirmed by Congress, and embraced in it over 800,000 acres. This is almost the same language as our grant except that possession is ordered, while in ours "the possessions," meaning lands, is ordered.

On May 7, 1846, less than a month prior to the making of the grant in question, a grant of five leagues was made by Armijo to John Scolly and others, and the granting decree as translated reads as follows:

"To the justice of Las Vegas: That he may proceed to place the petitioners in possession, setting apart such lands for cultivation as they may be able to cultivate," etc.

It was understood that the words "granted as prayed for" were intended to precede the reference to the justice of the peace. That grant was also approved by the Surveyor General and confirmed by Congress.

The foregoing selections have been made so as to cover the period between the Mexican revolution and the cession of New Mexico to our government. There are many others of the grants during that period which were made by the same words, none of them using the word grant, but simply stating, "to the justice of the peace or alcalde," as the case might be. Those people receiving the grant were always respected from the dates thereof as the sole and exclusive owners thereof, and the Surveyor General decided that they were good and valid grants in favor of the grantees, and segregated the lands from the public domain. Each one of those before referred to specifically was confirmed by the act of Congress dated June 21, 1860. They have been cited because they have been adjudicated by the Surveyor General and acted upon by Congress, and are in a condition that this court will take judicial notice of them. And they are here referred to to show the court what the customary form of grant in New Mexico was, and that they were in question while under consideration, and were as full as that custom required.

This seems to have been a form of grant which very extensively prevailed in New Mexico, even under the Spanish regime. It is true that all of the grants were not in this form. Some of them were very full and complete. Some of them were even less exact in their language than these cited. The counsel for appellant claims that this grant under consideration was only a grant of the possession of the land, but the grant and the petition, all the authorities say, must be construed together to ascertain the meaning, and when taken in connection with the language of the regulation correctly translated, including a correct translation of this

decree, it is difficult to see how a mere *possession only* was given (Youtz *vs.* U. S., 23 How., 498). It is not to be supposed that the Governor would act outside of the purview of every law. There was no law which authorized or justified the giving, by grant, of a mere possession. In California, there a few cases where the Governor permitted a party to search for lands, such as he might need, but required him to report to the executive and file the requisite papers or petition for a grant if he should find such lands. But nowhere, it is believed, can it be found that they went to the trouble of granting a mere possession. Evidently the petitioner in this case wanted the land. He solicited the land, and asked that it be granted to him. Gave his name, his residence, and his nationality, and what he was doing, and wished to do, showing that he was taking steps directly under the provisions of the regulations for making grants, and not for the purpose of acquiring an uncertain and indefinite possession.

T. B. CATRON,
Attorney for Appellants.

UNITED STATES *v.* ELDER.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 35. Argued October 13, 16, 1899.—Decided March 26, 1900.

United States v. *Ortiz*, 176 U. S. 422, affirmed and followed, to the point that, in order to justify the confirmation of a claim under an alleged Mexican grant, under the act of March 3, 1891, c. 539, 26 Stat. 854, it is essential that the claimants establish, by a preponderance of proof, the validity of their asserted title.

The mere approval, by the governor, endorsed on a petition presented to him for a grant, before a reference to ascertain the existence of the prerequisites to a grant, is not the equivalent of a grant.

In order to vest an applicant under the regulations of 1828, with title in fee to public land, it was necessary that the grant should be evidenced by an act of the governor, clearly and unequivocally conveying the land intended to be granted, and a public record in some form was required to be made of the grant; and the action of the legislative body could not lawfully be invoked for approval of a grant, unless the expediente evidenced action by the governor, unambiguous in terms as well as regular in character.

The mere indorsement by a Mexican governor of action on the petition, before any of the prerequisite steps mentioned in the regulations of 1828 had been taken to determine whether, as to the land and the applicants, the power to grant might be exercised, was a mere reference by the governor to ascertain the preliminary facts required to justify an approval of an application, and had no force and effect as an actual grant of title to the land petitioned for.

Although the documents in question in this case, executed by the prefect and the justice of the peace, fairly import that those officials assumed authority to grant something as respected the land in question, they did not, in 1845, possess power to grant a title to public lands.

THE alleged Mexican grant which forms the subject of this controversy relates to a tract of land situate in the county of

Taos, New Mexico, embraced in what is designated as the Cebolla grant. The asserted grant was presented in 1872 for confirmation to the surveyor general of New Mexico, under the act of July 2, 1854, by John T. Graham and William Blackmore, who averred that they possessed a perfect title to the land covered by the grant, by reason of mesne conveyances from the original grantees. This claim so presented was favorably reported to Congress, but it does not appear that any action was taken thereon. Upon a survey made by the direction of the General Land Office in November, 1877, the area embraced in the alleged grant was declared to consist of 17,159.57 acres. The controversy now here for review was commenced by proceedings instituted in the Court of Private Land Claims to obtain a confirmation of this alleged grant. The petition to that end was filed on February 18, 1893, on behalf of the present appellees, who asserted that they were the owners of the Cebolla tract by purchase from the heirs and assigns of the original grantees. The alleged grant was asserted to have been made on December 31, 1845, by Manuel Armvjo, governor of New Mexico, and the papers claimed to evidence such grant, as translated, are reproduced in the margin.[1]

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[1] Seal Fourth. [SEAL] Two reales.

Years one thousand eight hundred and forty-two and one thousand eight hundred and forty-three.

Habilitated for the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

Administrator AGUSTIN DURAN. Governor MANUEL ARMIJO.

To his excellency Manuel Armijo, Governor of this Department of New Mexico:

I, Carlos Santistevan, for myself and in the name of five other associates, all residents of the town of Dolores, in the district of Taos, before your excellency in due legal form, represent and state that finding without any land with title in fee to cultivate for the support of ourselves and our needy families, and having found a vacant tract very suitable tract for cultivation, irrigable from certain water, said to be from the Lama, quite sufficient for its irrigation, at the place called by that name up to another place, the Cebolla, which places are between the settlements of the Rio Colorado and San Cristoval, pertaining to the said district of Dolores de Taos, I ask and pray, from the well known and distinguished liberality of your excellency, that in the name of the high powers of our Mexican Republic, you be pleased to

It was averred in the petition with respect to the survey above referred to, that it was not made in accordance with the boun-

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make us a grant of the said tract; for the same is of very convenient size, and has ample water to be cultivated, and to afford sufficient support for the petitioners and their families, and would not injure any third party with respect to property or pasturage, or in any other way, but would rather result in the great welfare and increase of population and of agriculture; and, besides relieving the necessity of the petitioners, it will also strengthen that locality or frontier which guards the said population of the Rio Colorado, from which the said tract is distant but about one league, and from the settlement of San Cristoval somewhat more.

Therefore I earnestly pray that your excellency be pleased to accede to this our petition. I declare and protest, etc.

City of Santa Fé, December 31, 1845. At the disposition of your excellency.

CARLOS SANTISTEVAN.

SANTA FÉ, *December* 31, 1845.

To the prefect of the district, that he ascertain whether the land applied for has an owner, and cause the corresponding justice to deliver the land referred to by the petitioner. ARMIJO.

JUAN BAUTISTA VIGIL Y ALARID, *Secretary.*

RIO ARRIBA, *January* 3, 1846.

The justice of the peace to whom it corresponds to do so will investigate whether the tract the petitioners apply for is vacant, and whether any injury to a third party would result from the granting thereof; and, none resulting, he will proceed to grant them of the land an abundance of what each can cultivate, under the condition that they inclose the same with a regular fence, in order to prevent damages, and that they do not obstruct the roads, pastures and watering places, and with notice that they shall keep arms sufficient for their defense.

D. LUCERO.

In this, the third precinct, Dolores, of the district of Taos, on the twentieth day of the month of March, one thousand eight hundred and forty-six, I, Juan Lorenzo Martines, justice of the peace, by authority of law, for the said precinct, in pursuance of a decree of January 3, eighteen hundred and forty-six, by his honor Diego Lucero, prefect of the second district of the north, issued to me as the proper justice, that I investigate whether the land applied for by the five petitioners is vacant, and I, meeting no impediment, proceeded to the tract and, finding the same uncultivated and unoccupied, took the petitioners by the hand, and leading them very slowly and in full legal form, in virtue of holding competent authority, I placed them in possession of the land they pray for for cultivation, they being without land in fee, doing so in the name of God and of the

daries set forth in the grant, but was "of a different portion of land, a part or all of which is included in the said grant." The

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high authority of our wise Mexican laws, which are sufficient to grant the public domain, to the end that idleness be banished and agriculture be encouraged. Wherefore they, at the instant they received their liberal donation and were favored in this manner, shouted with joy, saying huzza for the renowned sovereignty of the Mexican nation. And in this joy they plucked up grass and cast stones, as being lawful proprietors of the land which they wished to irrigate with the water of the valley of the Lama, as relying upon that small water source they had applied for the donation; and I therefore designate to them for limits: On the north, the boundaries of the Rio Colorado grant; on the south, to where the dividing line of San Cristoval is reached; on the east, the mountain, and on the west, the edge of the bluff of the Rio Del Norte, leaving the pastures, roads, and watering places free, eastwardly, from where they cannot irrigate; they not to prevent pasturing in virtue of being the possessors; and they are also obligated to inclose with a regular fence, so that they may not have to claim damages, and shall keep arms sufficient for their protection.

And to the end that this grant may in all time subsist, I authenticate the same under the authority conferred upon me, with my attending witnesses, for the lack of a notary public, there being none in this department; and it is done on this common paper, there being none of the proper stamp, the new settlers binding themselves to supply the same of the proper stamp whenever they can opportunely procure it; to all of which I certify.

J. LORENZO MARTINES.

Attending: JUAN JOSÉ CORDOVA.
Attending: JOSÉ CONCEPCION MEDINA.

NOTE.—The persons placed in possession, with their full names, are those following in this list of names, made that they, for the sake of peace and good neighborhood, may in proportion to the tract divide among themselves the land I delivered them without measuring, owing to the very inclement day and the much thicket which impeded the cord; and they are in this list: Juan Carlos Santistevan, José Manuel Garcia, Julian Santistevan, Carlos Ortivis, Tomas Ortivis.

Valid. [RUBRIC.]
Attending: JUAN JOSÉ CORDOVA.
Attending: JOSÉ CONCEPCION MEDINA.

Tomas Ortivis being of those placed in possession in this grant, at the foot of which this note is appended, he transfers to his brother Carlos Ortivis, all his rights in this grant; and he signed this before me, Lorenzo Martin, alcalde, and the said Tomas signed this with me this 7th April, 1850.

LOR'O MARTIN, *Alcalde.*
Attending: RAFAEL SISNEROS. TOMAS ORTIVIS. X
Attending: MATEO ROMEO. X

Court of Private Land Claims entered a decree, (Murray, J., dissenting,) defining the boundaries of the tract covered by the claim as allowed, and confirming title thereto in "the heirs and assigns of said five original grantees and to their heirs and assigns." The United States thereupon appealed to this court.

Mr. Matthew G. Reynolds for the United States. *Mr. Solicitor General* and *Mr. William H. Pope* were on his brief.

Mr. T. B. Catron for Elder.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the court.

It is contended that the court below erred in confirming the alleged grant—

1. Because the documents relied upon, assuming them to be genuine, do not show that a grant was made, for the reason that on their face they do not purport to be a grant by the governor of New Mexico;

2. Even if the papers can, on their face, be construed as importing a grant by the governor, the claimants were not entitled to confirmation, because there was no archive evidence of the alleged grant and no inscription of the same in the records of the former government;

3. That the governor of New Mexico was without authority to make a grant of public lands at the time the papers relied upon purport to have been executed; and—

4. That even if it be conceded that the governor, at the time in question, had power to make a grant, and that the papers are held to be a manifestation of his purpose to do so, yet, be-

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Carlos Ortivis being of those placed in possession under this grant, at the foot of which this note is appended, he transfers to the citizen José Gonzales his rights in the grant; and he signed this before two witnesses present; and he transferred his rights for the price of two dry cows, one cow with a calf and one yoke of oxen; which he signed with the witnesses this 29th of September, 1850. Carlos Ortivis. X

Witness: José Miguel Pacheco.

Witness: José Bitor Vales. X

cause of a failure to show compliance with essential conditions exacted by the Mexican law, the claimants have not established such a case as entitles them to a decree of confirmation.

The matters embraced in the two last propositions involve legal questions of serious moment, which have been elaborately discussed at bar, but are unnecessary to be considered, if at all, until the subjects covered by the first two contentions are disposed of.

Before approaching a consideration of the two first questions, which logically come under one head, we premise by stating that in order to justify the confirmation of a claim, under the act of March 3, 1891, c. 539, 26 Stat. 854, it is essential that the claimants establish, by a preponderance of the proof, the validity of their asserted title. *United States* v. *Ortiz*, 176 U. S. 422.

To ascertain whether the papers relied upon constitute a grant of title to land, and to determine whether the existence of archive evidence of a grant is an essential prerequisite to the confirmation of the alleged title, it is necessary to briefly recapitulate the provisions of the Mexican colonization law of 1824 and the regulations of 1828 thereunder, and to review previous adjudications on the subject of the form required by Mexican law to manifest that the power to grant had been exercised. It is necessary to do this, since it is undoubted that although it be conceded that the governor of the Territory of New Mexico possessed power in 1845 and 1846 to make a grant of public lands situated within that territory, nevertheless the right to exercise such power as well as the documents by which it was essential to manifest the calling into play of the power, was derived from and was dependent upon the colonization law and the regulations thereunder just mentioned.

The law of 1824 was enacted to provide for the colonization of vacant public lands, and the regulations were adopted for the purpose of executing the powers which the law conferred. Certain articles or sections of the regulations of 1828, to which we shall hereafter have occasion to refer, are printed in the margin.[1]

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[1] Excerpts from the Regulations of November 21, 1828 (Reynolds' Span. & Mex. Land Laws, pp. 141, *et seq.*):

In brief, the regulations of 1828, adopted to carry into effect the law of 1824, required every applicant for a grant of land to present a petition to the executive head of the territory, alleg-

"1. The political chiefs of the territories are authorized, under the law of the General Congress of the 18th of August, 1824, and under the conditions that will hereafter be stated, to grant the public lands of their respective territories to the contractors, families or private persons, Mexicans or foreigners, who may apply for them for the purpose of cultivating them or living upon them.

"2. Every applicant for land, whether contractor, head of family or private person, shall apply to the political chief of the respective territory with an application in which is given his name, country, profession, the number, nature, religion and other circumstances of the families or persons whom he desires to colonize, and shall also mark as distinctly as possible and describe on a map the land he applies for.

"3. The political chief shall proceed immediately to obtain the necessary information as to whether or not the conditions required by said law of the 18th of August are found in the application, both as regards the land and the applicant, either that this latter be attended to simply or that he be preferred, and shall at the same time hear the respective municipal authority as to whether any objection or not is found to the grant.

"4. In view of all of which the political chief shall grant or not said application in strict conformity with the law applicable to the matter, especially with that of the 18th of August, 1824, already cited.

"5. The grants made to private persons or families shall not be held to be definitely valid without the previous consent of the territorial deputation, for which purpose the respective proceedings shall be forwarded to it.

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"8. The grant asked for being definitely made, a document signed by the political chief shall be issued to serve as a title to the party in interest, it being stated therein that the grant is made in entire conformity with the provisions of the laws, in virtue of which the possession shall be given.

"9. The corresponding entries of all the applications presented and grants made shall be made in a book intended for the purpose, with the maps of the lands that shall be granted, and a detailed report shall be forwarded to the supreme government every quarter.

"10. No stipulation shall be admitted for a new settlement, unless the contractor obligates himself to furnish at least twelve families as settlers.

"11. The political chief shall set a reasonable time for the settler, within which he must necessarily cultivate or occupy the land in the terms and with the number of families which he has stipulated, in the intelligence that if he does not do so the grant of the land should be void, but the political chief may, nevertheless, revalidate it in proportion to the part in which the party in interest had complied.

ing the existence of certain facts. That official was directed to obtain information as to whether or not the necessary conditions authorizing the making of a grant existed; and upon the receipt of such information the application was to be granted or rejected in strict conformity to law. As respected grants to heads of families or private persons, the "proceedings" culminating in a grant were required to be forwarded to the legislative body of the territory for its approval, until which approval grants were not to be definitively valid, while grants to contractors for the colonization of many families required the approval of the supreme government, to whom the proceedings were to be sent for its action.

Concerning the fourth article or section of the regulations this court said, in *Arguello* v. *United States*, 18 How. 539, 543:

"By the fourth section the governor, being thus informed, may 'accede or not' to the prayer of the petition. This was done in two ways; sometimes he expressed his consent by merely writing the word 'concedo' at the bottom of the expediente; at other times it was expressed with more formality, as in the present case. But it seldom specified the boundaries, extent or conditions of the grant. It is intended merely to show that the governor has 'acceded' to the request of the applicant, and as an order for a patent or definitive title in due form to be drawn out for execution. It is not itself such a document as is required by the eighth section, which directs 'that the definitive grant asked for being made, a document signed by the governor shall be given to serve as a title to the parties interested.'"

That the mere approval by the governor endorsed on a petition presented to him for a grant, before a reference to ascertain the existence of the prerequisites to a grant, or indeed the action of the governor antecedent to the actual execution by him of a formal grant which was required by law, was not the equivalent

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"12. Every new settler, after he has cultivated or occupied the land under his stipulation, shall be careful to so show to the municipal authority, in order to consolidate and secure his right to the property to enable him to freely dispose thereof, after the proper record has been made."

of the grant, was clearly decided. The court, referring to a mere approval of a claim for land, said:

"The document of the 26th has none of the characteristics of a definitive grant. It shows that only the governor assents that the petitioner shall have a grant of land called 'Las Pulgas.' It describes no boundary, and ascertains no quantity. It contemplates a 'corresponding patent,' and does not purport itself to be such a document."

In *Hornsby* v. *United States*, 10 Wall. 224, the court considered the requirement of article 5 of the regulations. It was declared to have been the duty of the governor, and not of the grantee, to submit to the legislative body of a territory of the Republic of Mexico, for its approbation, grants issued by the governor; that by a grant, regular in form and of which archive evidence existed, a title of some kind passed to the applicant, and that, as respected such a grant, under the powers conferred on the court by the California act, a failure to obtain juridical possession or the approval of the departmental assembly, prior to the treaty of cession, did not operate to forfeit the title of the grantee or prevent a confirmation of a claim based on such grant. Whether this rule applies under the act of March 3, 1891, is one of the questions embraced in the propositions which we have postponed considering and as to which therefore we presently intimate no opinion whatever.

The "proceedings" which by article 5 of the regulations were to be forwarded to the legislative body were termed an expediente. What was embraced in the expediente is thus stated in *United States* v. *Knight's Adm'r*, 1 Black, 227, 245:

"When complete an expediente usually consists of the petition, with the diseño annexed; a marginal decree, approving the petition; the order of reference to the proper officer for information; the report of that officer in conformity to the order, the decree of concession and the copy or a duplicate of the grant. These several papers—that is, the petition with the diseño annexed, the order of reference, the informé, the decree of concession and the copy of the grant, appended together in the order mentioned—constitute a complete expediente within the meaning of the Mexican law."

And in *United States* v. *Larkin*, 18 How. 557, 561, this court, speaking of the final order or decree by a governor exhibiting favorable action upon an application, it was expressly declared that a "concession and direction constitute a part of the evidence of the title, or, according to the Mexican vocabulary, a part of the 'expediente.'"

In *Fuentes* v. *United States*, 22 How. 443, the nature and importance of an expediente was commented upon. In that case confirmation was sought of a purported grant without the production of an expediente. The court said (p. 453):

"The case, then, stands altogether disconnected from the archives, and exclusively upon the paper in the possession of Fuentes. It has no connection with the preliminary steps required by the act of Mexico of the 18th of August, 1824, or with the regulations of November 28, 1828. It is deficient in every particular—unlike every other case which has been brought to this court from California. There was no petition for the land; no examination into its condition, whether grantable or otherwise; none into the character and national status of the applicant to receive a grant of land; no order for a survey of it; no reference of any petition for it to any magistrate or other officer, for a report upon the case; no transmission of the grant—supposing it to be such—to the departmental assembly or territorial legislature, for its acquiescence; nor was an expediente on file in relation to it, according to the usage in such cases.

"All of the foregoing were customary requirements for granting lands. Where they had not been complied with, the title was not deemed to be complete for registration in the archives, nor in a condition to be sent to the departmental assembly for its action upon the grant. The governor could not dispense with them with official propriety; nor shall it be presumed that he has done so, because there may be, in a paper said to be a grant, a declaration that they had been observed, particularly in a case where the archives do not show any record of such a grant."

That the proceedings evidenced by the expediente may be examined in passing upon the claim of a grant in fee was expressly adjudicated in *De Haro* v. *United States*, 5 Wall. 599.

Speaking of the execution of a grant in duplicate, it was said in *United States* v. *Osio*, 23 How. 273, 279:

"Grants under the colonization laws were usually issued in duplicates, one copy being designed for the party to whom it was made, and the other to remain in the archives to be transmitted with the expediente to the departmental assembly for its approval. They were in all respects the same, except that the copy left in the office, sometimes called the duplicate copy, was not always signed by the governor and secretary, and did not usually contain the order directing a note of the grant to be entered in the office where land adjudications were required to be recorded."

As shown in the excerpt of article 9 of the regulations of 1828, it was required that a record should be made of the applications presented and grants made. Concerning this provision, this court in the case last cited said (p. 279):

"Adjudications of land titles were required by the Mexican law to be recorded. That requirement, however, was regarded as fulfilled, according to the practice in the department of California, when a short entry was made in a book kept for the purpose, specifying the number of the expediente, the date of the grant, a brief description of the land granted, and the name of the person to whom the grant was issued."

Again, referring to article 9, in *United States* v. *Bolton*, 23 How. 341, this court said (p. 350):

"Sec. 11" (9?) "directs that a proper record shall be kept of all the petitions presented and grants made, with maps of the lands granted.

"This record is the evidence of the grant. It being made, the governor (sec. 8) shall sign a document and give it to the party interested to serve as a title, wherein it must be stated that said grant (to wit, *the record*) is made in exact conformity with the provisions of the laws. In virtue of this document issued to the party, possession of the lands shall be given. But the document is not sufficient of itself to prove that the governor has officially parted with a portion of the public domain and vested the land in an individual owner. This must be established before the board of commissioners by record evidence,

as found in the archives, or which had been there and has been lost."

As instructive upon the point now under consideration we quote from the opinion delivered in *Pico* v *United States*, 2 Wall. 279, 281:

"The regulations of 1828, which were adopted to carry into effect the colonization law of 1824, prescribed with great particularity the manner in which portions of the public domain of Mexico might be granted to private parties for the purposes of residence and cultivation. It is unnecessary to state the several proceedings designated, as they have been the subjects of frequent consideration in previous opinions of this court. All of them, from the petition of the colonist or settler to the concession of the governor, were required to be in writing, and when the concession was made, to be forwarded to the departmental assembly for its consideration. The action of that body was entered with other proceedings upon its journals, and these records, together with the documents transmitted to it, were preserved among the archives of the government in the custody of the secretary of state of the department. The approval of the assembly was essential to the definitive validity of the concession, and when obtained a formal grant was issued by the governor to the petitioner. The regulations contemplated an approval to precede the issue of the formal grant; so when the grantee received this document the concession should be considered final. For a long time after the adoption of the regulations this course of proceeding was followed; but afterwards, and for some years previous to the conquest, a different practice prevailed, and the formal title papers were issued without waiting for the action of the assembly, a clause being inserted to the effect that the grant was subject to the approval of that body. Of the petitions presented and grants issued, whether before or after the approval of the assembly, a record was required to be kept in suitable books provided for that purpose.

"As will be perceived from this statement, it was an essential part of the system of Mexico to preserve full record evidence of all grants of the public domain, and of the various

proceedings by which they were obtained. When, therefore, a claim to land in California is asserted under an alleged grant from the Mexican government, reference must, in the first instance, be had to the archives of the country embracing the period when the grant purports to have been made. If they furnish no information on the subject, a strong presumption naturally arises against the validity of the instrument produced, which can only be overcome, if at all, by the clearest proof of its genuineness, accompanied by open and continued possession of the premises."

In *Peralta* v. *United States*, 3 Wall. 434, there was considered the validity of an alleged grant claimed to have been made in the early part of 1846. The grant was attempted to be established by the introduction in evidence, from private hands, of an expediente, embracing documents exhibiting the proceedings had preliminary to the making of the alleged grant, including an order of the governor, based upon the report of a prefect, that a title issue, and parol proof of the execution of a formal grant. In the course of the opinion affirming the decree of the district court rejecting the grant, the court reiterated former declarations, saying (p. 440):

"The colonization regulations of 1828 constitute the 'laws and usages' by which the validity of a Mexican title is to be determined. It is not important to restate the nature and extent of those regulations, for they have been so often commented on that they are familiar to the profession. The Mexican nation attached a great deal of form to the disposition of its lands, and required many things to be done before the proceedings could ripen into a grant. But the important fact to be noticed is, that a *record* was required to be kept of whatever was done. This record was a guard against fraud and imposition, and enabled the government to ascertain with accuracy what portions of the public lands had been alienated. *The record was the grant*, and without it the title was not divested. The governor was required to give a document to the party interested, which was evidence of title, and enabled him to get possession; but this 'titulo' did not divest the title, unless record was made in conformity with law."

The solemnity of juridical possession as connected with the investiture of a private person with a complete and perfect title to public lands of Mexico has been commented upon in various decisions of this court. *Malarin* v. *United States*, 1 Wall. 282; *Graham* v. *United States*, 4 Wall. 259; *Van Reynegan* v. *Bolton*, 95 U. S. 33; *United States* v. *Pico*, 5 Wall. 536, and *More* v. *Steinbach*, 127 U. S. 70.

In *Malarin* v. *United States*, discussing the claim of the execution of an alleged grant of public lands in the territory of California in 1840, the court said (p. 289):

"When the grant to Pacheco was issued there still remained another proceeding to be taken for the investiture of the title. Under the civil, as at the common law, a formal tradition or livery of siesin of the property was necessary. As preliminary to this proceeding the boundaries of the quantity granted had to be established, when there was any uncertainty in the description of the premises. Measurements and segregation in such cases, therefore, preceded the final delivery of possession. By the Mexican law various regulations were prescribed for the guidance, in these matters, of the magistrates of the vicinage. The conditions annexed to the grant in the case at bar required the grantee to solicit juridical possession from the proper judge. In compliance with this requirement, within four months after the issuance of the grant, he presented the instrument to the judge of the district, and requested him to designate a day for delivering the possession. The judge designated a day, and directed that the adjoining proprietors be cited, and that measures and counters be appointed. On the day designated the proprietors appeared, and two measurers and two counters were appointed and sworn for the faithful discharge of their duties. A line provided for the measurement was produced, and its precise length ascertained. The measurers then proceeded to measure off the land, the judge and the proprietors accompanying them. The measurement being effected, the parties went to the center of the land, and there the judge directed the grantee to enter into the possession, which he did, and gave evidence of the fact 'by pulling up grass and making demonstrations as owner of the land.' Of the various steps thus taken, from the

appointment of the day to the final act of delivery, a complete record was kept by the judge, and by him transmitted to the grantee after being properly entered upon the 'book of possessions.'"

It appears from the adjudications of this court that the formal grants made to land in the territory of California enumerated conditions attached to the grant, in seeming compliance with the spirit if not the letter of the Mexican colonization law, and with the exactions of the regulations adopted to execute the same. It certainly cannot be questioned that, under Spanish dominion, the public lands were not granted in the first instance, in fee, to settlers or colonists, freed from conditions. As said by this court in *Chaves* v. *United States*, 168 U. S. 177, 188, speaking of the Spanish law in force in 1788:

"Lots and lands were distributed to those who were intending to settle, and it was provided that 'when said settlers shall have labored in said settlements during the space of four years, they are hereby empowered, from the expiration of said term, to sell the same and freely to dispose of them at their will as their own property.' But confirmation by the audiencia, or the governor if recourse to the audiencia was impracticable, after the four years had elapsed, was required in completion of the legal title."

The constituents of the preliminary papers leading up to a grant and of the grant itself, and the distinction between them, to which attention had been so often directed by this court, was pointedly reiterated in the statement of the case made by Mr. Chief Justice Fuller in *Ainsa* v. *United States*, 161 U. S. 208, 219, as follows:

"An expediente is a complete statement of every step taken in the proceedings, and a testimonio is the first copy of the expediente. A grant of [or?] final title paper [s] is attached to the testimonio and delivered to the grantee as evidence of title, and entry is made at the time in a book called the Toma de Razon, which identifies the grantee, date of the grant and property granted."

It is manifest from the foregoing review of the decisions under the California act, that it was held, that in order to vest an

applicant under the regulations of 1828, with title in fee, either absolute and perfect, or conditional and imperfect, to public land, substantial compliance with the preliminary requisites to a grant was essential, it was necessary that a grant should be evidenced by an act of the governor, clearly and unequivocally conveying the land intended to be granted, and a public record, in some form, was required to be made of such grant.

As a corollary from the foregoing, it of course follows that the action of the legislative body could not lawfully be invoked for the approval of a grant, unless the expediente evidenced action by the governor, unambiguous in terms as well as regular in character.

Although it be assumed that there was a settled practice in New Mexico prior to the treaty of cession, to evidence a grant of land by a decree of the governor entered upon the reports made to him, without the execution of an independent and formal grant, such assumption would not avail in this case. For, undoubtedly, it would be essential in a paper of the character referred to that it should indicate the land to which the grant referred and the persons to whom it was made, and, further, that there should be a record thereof. It is patent that the regulations contemplated that the original "proceedings" or expediente which were to be forwarded to the departmental assembly, if evidencing the fact that a grant had actually been made, should remain in the custody of the public officials, and that such "proceedings" to be complete should exhibit the action taken by the governor after the ascertainment of the prerequisites required by law.

Inspecting, then, the alleged granting papers on the assumption of their genuineness, we proceed to determine whether or not they justify the contention that thereby a valid grant of any kind was made. In doing so let us consider, first, the form of the alleged granting papers, and, second, their substance.

The only ground for contending that there was a grant by the governor must rest on the inference that the indorsement by the official named, on the petition of Santistevan, manifested the purpose of the governor to grant an absolute title to land, and operated to constitute a formal deed of grant. The indorsement thus referred to is as follows:

"SANTA FÉ, *December* 31, 1845.

"To the prefect of the district, that he ascertain whether the land applied for has an owner, and cause the corresponding justice to deliver the land referred to by the petitioner. ARMIJO.

"JUAN BAUTISTA VIGIL Y ALARID, *Secretary*."

But, under all the authorities to which we have referred the mere endorsement by a Mexican governor of action on the petition, before any of the prerequisite steps mentioned in the regulations of 1828 had been taken to determine whether as to the land and the applicants the power to grant might be exercised, was treated as a mere reference by the governor to ascertain the preliminary facts required to justify an approval of an application, and not as having force and effect as an actual grant of title to the land petitioned for. Under the decisions referred to, it cannot be doubted that the regular practice was deemed to be the execution of a formal deed of grant, following a decree acceding to the application, after reports made as to the results of the investigation directed to be had as required by law.

Whilst, as we have said, it may have been the practice in New Mexico for the governor not to make an independent, formal grant, but, after the receipt of reports from subordinate officials, to indorse a decree of concession or grant upon the papers evidencing the "proceedings" in the matter, such practice would not justify the conclusion that the mere approval indorsed on a petition, amounting but to a direction to take the necessary steps for the ascertainment of needed information, should be treated as dispensing with any manifestation by the governor of his intention to grant a title to land after the requisite information had been communicated to him. It is manifest that the prefect to whom the indorsement by the governor on the petition was addressed did not consider it as a grant of title to the tract of land in question, since he directed the justice of the peace, if the land was vacant and third parties would not be injured thereby, to "proceed to grant them of the land an abundance of *what each can cultivate*, under the condition that they inclose the same with a regular fence, in order to prevent damage, and that they do not obstruct the road, pastures and water-

ing places, and with notice that they should keep arms sufficient for their defense."

Now, it is undoubted that the documents executed by the prefect and the justice of the peace fairly import that those officials assumed authority to grant something as respected the land in question, either title or a right of possession for purposes of cultivation, but it is beyond controversy that the officials referred to did not, in 1845, possess power to grant the title to public lands. *Hays* v. *United States*, 175 U. S. 248; *Crespin* v. *United States*, 168 U. S. 208; *United States* v. *Bergere*, 168 U. S. 66. If, however, the subordinate officials referred to presumed to act on behalf of the governor in making a grant of title, the failure of the latter to subsequently ratify their action rendered their acts nugatory. *United States* v. *Bergere*, *supra*.

As a grant of title by the governor was a prerequisite to the conferring of juridical possession, of necessity the delivery thereof must have conformed to such precedent grant, and the mere act of possession cannot in any view have the force and effect of a grant. The document evidencing possession certainly formed no part of the "proceedings" or expediente which was required to be transmitted to the legislative body for its decision, approving or disapproving action taken by the governor antecedent to the giving of possession.

Passing, however, from the mere question of form and considering the substance of things, can the papers relied upon be treated as constituting a grant of title to the land in question? Certainly, the adjudications of this court upon the regulations of 1828, from the beginning, have established the doctrine that a grant of Mexican land could not be confirmed unless there had been at least a reasonable compliance with the requirements of those regulations. Now, the Mexican law under which, if at all, a grant of this land could have been made, required the governor to be informed both as to the capacity of the individual under the law to receive the grant, and as to whether the land petitioned for was in a condition for grant. And whilst exacting that the governor should thus have the means of information in order to enable him to form a judgment, the law pointed out the officials to whom he should refer the petition for examination and report on these subjects.

Now, in the case before us, that the governor at the inception of the proceedings was not sufficiently informed, either as to the land or the applicants, to take final action upon the petition, is patent on the face of the documents. Thus, the petition does not designate who were the "five" associates of Santistevan, and the governor in his indorsement requires the prefect to ascertain the condition of the land. Further, though the prefect was not informed, either by the petition or the indorsement of the governor, as to who were the petitioners to whom delivery of the land was to be made, he remained ignorant on the subject, and directed the justice of the peace to ascertain the condition of the land, and to grant to the "petitioners" (asserted in the petition of Santistevan to be *six* in number) an abundance of what each could cultivate of the land, under certain prescribed conditions. We find, however, the justice of the peace assuming to grant to "*five* petitioners" jointly, either a title to or the right of possession of, all the land within described boundaries.

Regarded as a grant of title, the documents relied upon import, contrary to the letter and spirit of the regulations, that it was a matter of no consequence to what particular individuals a grant was to be made, and that Santistevan might designate, at his pleasure, the persons to be placed with himself in possession. But, by article 3 of the regulations, the determination whether the conditions required by the colonization law existed, "both as regards the land and the applicant," was imposed upon the executive head of the territory. And as already shown, the grant could not have been created by the mere conferring of juridical possession, since the authority to give possession was necessarily derived from and must have conformed to a precedent grant.

It is manifest that the indorsement of Governor Armijo, considered by itself or in conjunction with the petition, failed to identify the petitioners, and did not, in terms, purport to grant title to land. As Santistevan petitioned that the grant be made by the governor "in the name of the high powers of our Mexican Republic," it is not permissible to infer that the governor intended to delegate to subordinate officials the power to decide whether an absolute or any title to the land petitioned for should

be granted, or to determine what portion thereof should be granted. The reasonable interpretation of the act of the governor would appear to be that he intended either to license the occupation of land within the prescribed limits for cultivation, or that he desired an examination and report to be made, with a delivery of temporary possession, pending further action on his part.

When it is borne in mind that the application of Santistevan purports to have been made at a time when hostilities were impending between Mexico and the United States, and the territory of New Mexico was undoubtedly in a disturbed condition, its citizens in all probability preoccupied with preparations for an impending clash of arms, the inference from the documents we have been considering is not unwarranted that but a mere temporary possession or license was intended by the prefect and justice of the peace to be conferred upon the applicants. Such an hypothesis would account for the long delay following the direction of the prefect to the justice of the peace, bearing date January 3, 1846, and the delivery of possession on the 20th of March following. And it is to be remarked that such a possession as could have been had of the land in question under then existing circumstances, during the short time intervening the asserted delivery of possession and the conquest of the country by the American forces, would have been insufficient to have constituted even an equity in favor of the alleged grantees, which this court could recognize were it clothed with the broad powers conferred by the California act. *Peralta* v. *United States*, 3 Wall. 434, 441. It may be added that the record fails to satisfactorily establish any occupancy or cultivation prior to the conquest, and but trifling cultivation thereafter, and the latter by a portion only of the alleged grantees.

To summarize. In the documents presented as establishing title in the alleged original grantees, there is an entire disregard of the requirements of the regulations of 1828, and the proceedings do not warrant the finding that the acts of the prefect and of the justice of the peace were ever reported to or received the approval of the governor, or that the latter official ever made a grant of title. The major portion of the documents claimed

to constitute title, if regular, properly constituted part and parcel of an expediente belonging to the archives. They, however, bear no indorsement to indicate that they had ever been among public archives prior to their production in 1872 from private custody for filing in the office of the surveyor general of New Mexico. So, also, no evidence was introduced tending to show that any sort of official record had ever been made of a grant of title to the land in controversy, while the tenor of the act of possession forbids the inference that any formal grant was ever executed by the governor. The case is therefore without the principle of various decisions of this court where, with repect to a formal grant, introduced in evidence, *complying with the requirements of the regulations*, but whose authenticity was disputed, the case was remanded to the lower court to permit the introduction of evidence, if such could be produced, to establish that archive evidence of the grant once existed. One of the prerequisites for the introduction of secondary evidence of title is proof that a "grant was obtained and made in the manner the law required." *United States* v. *Castro*, 24 How. 346, 350.

Unless it be assumed that the Mexican Government was indifferent as to the disposition of its lands, and that anybody and everybody possessed power to convey them, as a matter of course, to whoever chose to ask for them, proceedings such as those we have reviewed cannot be treated as having had the effect of divesting the Republic of Mexico of title to a portion of its public lands.

Sustaining, as we do, the first two contentions urged by the Government, it becomes unnecessary to consider or pass upon the others which were pressed upon our attention. As a consequence of the foregoing reasons, it results that the claim should have been rejected by the Court of Private Land Claims, and that because it erroneously confirmed the alleged grant, the decree made below should be

Reversed and the cause remanded with instructions to reject the claim and dismiss the petition, and it is so ordered.

Mr. Justice Brewer and Mr. Justice Brown concurred in the result.

Mr. Justice Shiras and Mr. Justice McKenna dissented.